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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 10 (AS)

5 AVRAHAM EISENBERG,

6 Defendant.

Trial

7 -----x
8 New York, N.Y.
9 April 9, 2024
8:30 a.m.

10 Before:

11 HON. ARUN SUBRAMANIAN,

12 District Judge
13 -and a jury-

14 APPEARANCES

15 DAMIAN WILLIAMS,

16 United States Attorney for the
Southern District of New York

17 PETER J. DAVIS

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-and-

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SANFORD N. TALKIN

23 NOAM B. GREENSPAN

24 Also Present: Brandon Racz, FBI

Ryan Sears, Paralegal Specialist-USAO

25 Jonathan Oshinsky, Paralegal Specialist-USAO

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(Trial resumed; jury not present)

THE COURT: Welcome back. So I think we got a few issues to pick up before we have the jury join us.

So the first issue that we should address is Government Exhibit 1512. Who's going to handle this from the government's side?

MR. BURNETT: I will, your Honor.

THE COURT: Just lay out for me, what's the relevance here, especially of highlighting the manipulation language from the AscendEX agreement. Maybe you can start with what AscendEX is and how does it figure into the case.

MR. BURNETT: Of course. So, AscendEX is a cryptocurrency trading platform. The pricing oracle on Mango Markets is the oracle that set the price for the perpetual that was manipulated here, looked to three different cryptocurrency exchanges in order to drive the price that it was going to use. AscendEX was one of the three exchanges. So, on the day of the attack, Mr. Eisenberg went onto AscendEX where he dramatically pumped up the price of the Mango token. So that's how it kind of fits into the scheme.

The terms of service then are extremely relevant and really essential to the government's case for a few different purposes. So, first, it shows what people's expectations were about the types of trading activity that would occur on AscendEX, which was being filtered in to the pricing oracle.

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1 That's important because we expect other witnesses -- one other
2 witness will testify that part of the reason centralized
3 exchanges like AscendEX was chosen for this oracle because they
4 have anti-manipulations protections and rules in place, which
5 was part of what was going to protect the integrity of the
6 pricing oracle. So it's central to proving like the fraudulent
7 piece of the scheme there.

8 It's also extremely important because as it was kind
9 of previewed during the original round of motions in limine
10 here, the defense intends to make a deal of the fact that Mango
11 Markets did not have service at the time of the attack here
12 and, in fact, has expressed their intention to offer terms of
13 service that were created after the fact, even though those
14 weren't available at the time. So the fact that there were
15 terms of service on other platforms that Mr. Eisenberg used and
16 those terms of service prohibited the type of conduct that he
17 was engaged in are important both going to his mental state and
18 also to rebutting this inference that Mr. Eisenberg cared in
19 any way about whether there were or were not terms of service
20 on Mango Markets.

21 Obviously, the fact that it defines "manipulation" and
22 also defines "fraudulent practices" is important because if the
23 terms of service didn't say anything about that, then it
24 wouldn't go one way or the other in terms of people's
25 expectations about what would happen on AscendEX or

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1 Mr. Eisenberg's mental state.

2 To the extent there's any concern about the definition
3 of "manipulation" overlapping with or conflicting with this
4 Court's legal instruction, I think this Court should do what I
5 think the Second Circuit blessed in the -- I think it was the
6 *DeCandia* case we cited in connection with our letter briefing
7 over the weekend about the kind of lay use of the term
8 "manipulation," which is just give a limiting instruction
9 telling the jury that at the end of the day, "manipulation"
10 will be a legal term for you to decide that I will instruct you
11 on. You should listen to what my instruction is on the term
12 "manipulation" as it pertains to the charges in this case.
13 This document is being introduced for purposes other than the
14 legal definition of "manipulation."

15 THE COURT: Okay. Thank you.

16 Who's going to address this from the defendant's side?

17 MR. KLEIN: Your Honor, me, Mr. Klein.

18 Our concern about this exhibit is manifold. One is if
19 you look at 413 on page 4, it does provide a definition of
20 "market manipulation." This exhibit is coming in through the
21 general counsel of AscendEX, Mr. Farrell, who will be
22 testifying about this, which is a legally driven document that
23 I believe he was involved drafting. Then it actually defines
24 "market manipulation" according to AscendEX here.

25 The limiting instruction I don't think would meet or

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1 stop the jury from having confusion because this definition is
2 not the legal definition, it's just the definition AscendEX on
3 its own came up with. And I think Mr. Burnett plans to have
4 him even read this into the record. And there's a whole host
5 of other things listed under "Marketplace Conduct and Rules."

6 And I think the government can still get its point
7 across by asking him, which I understand they do intend to do,
8 did you freeze his account because he violated your terms of
9 service. And that would get the point across, the same point
10 they're trying to make.

11 As to the connection to another witness down the road,
12 I don't know who that witness is or what they're going to say
13 and whether there's a foundation for that or anything, so I
14 can't speak to that yet. But I can see this document itself,
15 which is fine print, "Marketplace Conduct and Rules," 413, and
16 there's a host of things they claim to prohibit and definitions
17 for them. And I worry would so confusion be unduly
18 prejudicial. There's limited probative value to having a
19 witness read in a definition of "market manipulation" who's a
20 general counsel and a lawyer. I think that's just going to
21 confuse the juror --

22 THE COURT: And to make sure that I'm clear,
23 Mr. Burnett, the witness is not going to be asked what the
24 meaning of the contract or the meaning of the terms in the
25 manipulation definition, what that is; right?

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1 MR. BURNETT: That's right. It would be better for me
2 to read it as opposed for the witness to read it, I'm happy to
3 do that, but we can't have an exhibit come in that we have to
4 hide from the jury.

5 THE COURT: No, I understand that.

6 To the extent there's a concern that the witness is
7 the general counsel who drafted the contract, and so that he
8 might somehow say this is this term and this is what I meant
9 when I drafted it, there's nothing like that that's going to
10 come in?

11 MR. BURNETT: No.

12 THE COURT: I'm going to overrule the objection to
13 this exhibit. I agree with the government, it is highly
14 probative on issues such as the fraud aspect of the scheme,
15 materiality, and especially given that the defense plans to
16 emphasize the lack of terms of service on Mango Markets, given
17 this was one of the platforms on which Mr. Eisenberg made his
18 trades, and it did have terms of service that had various
19 provisions, I think that overwhelms any potential juror
20 confusion.

21 And so, the objection, as I understand it, under
22 Rule 403, is not well taken. However, I will give a limiting
23 instruction and tell the jury after the exhibit goes in that,
24 to the extent that it has any definition or refers to
25 "manipulation," the jury should follow my instructions on the

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1 meaning of that term and not what is contained in any of the
2 exhibits. That's exhibit 1512.

3 On the hypothetical questions, which I understand is
4 something that may come up today, I've reviewed the
5 government's letter. *Cuti* comes up in a slightly -- so, just
6 to set the stage. The government's refers the Second Circuit's
7 decision in *Cuti*, which indicates that hypothetical questions
8 to the government's witnesses is permitted under certain
9 circumstances. That case refers to a number of other cases
10 that indicate that it is especially useful and permitted in the
11 context of fraud. And *Cuti* itself, the fact pattern is a
12 little bit different than this case because I think there, the
13 withheld facts are the facts that were assumed by the witness,
14 had been admitted into evidence. And so, it was just the
15 slightly different fact scenario. However, the cases that *Cuti*
16 refers to, in particular, the Tenth Circuit's decision in *Ore*,
17 which, in turn, relies on the Fourth Circuit's unpublished --
18 although the Tenth Circuit says that its reasoning was highly
19 persuasive -- decision in *Dukes*, I think match almost exactly
20 the two questions the government intends to ask.

21 And so, my inclination is to overrule any objection to
22 those two questions as long as they're stated the way they're
23 laid out in the government's letter, but I'll hear from the
24 defense.

25 MR. KLEIN: Your Honor, we maintain our previous

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1 objection and have an additional objection, which is I don't
2 think they have the foundation for these questions for the
3 witnesses, at least the witness they're going to do today.

4 So these questions depend on the person actually being
5 involved in the transaction or somehow trading that day. And
6 so, their first witness -- one of the witnesses today,
7 Mr. Smith, from what I understand, was not trading that day or
8 not involved in the market and only learned after the fact
9 about the incident. And so, if you're asking a witness a
10 hypothetical question about would you have done something, that
11 assumes that they were somehow aware of it at the time or
12 somehow involved at the time, or as this witness, from what I
13 know and from the 3500 material, learned about this after the
14 fact, was not trading that day, was not transacting on the
15 platform that day.

16 THE COURT: To be clear, turning back to some of the
17 cases that the government relies on, in those contexts,
18 questions were asked to investors who were the alleged deceived
19 parties, and those investors were asked, for instance, whether
20 certain representations would be material or not. You're
21 saying that's different than what's at issue here because the
22 witness that is being asked these questions is not the person
23 who at that time would have either relied or not relied on the
24 represented conduct?

25 MR. KLEIN: Exactly, your Honor.

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1 THE COURT: Mr. Burnett, is that right or wrong?

2 Mr. Davis

3 MR. DAVIS: Your Honor, that's factually incorrect and
4 legally wrong. Factually, we expect the testimony today will
5 be that Mr. Smith had approximately \$10,000 worth of
6 cryptocurrency on the platform at the time of Mr. Eisenberg's
7 crime. So he is in a position to answer this question exactly.
8 So the factual premises is wrong and that kind of ends the
9 defendant's argument.

10 But going back to what this Court said earlier about
11 the materiality standard, which, of course, is an objective
12 one, the Second Circuit and the cases we've cited expressly
13 allow us to ask these questions and that's exactly what we
14 intend to do.

15 THE COURT: But putting aside the \$10,000 in
16 cryptocurrency, is there any other basis to put Mr. Smith in
17 that category of people that it would matter what his views
18 were, if that makes sense. Meaning that -- do you understand
19 what I'm saying? I understand he's got the \$10,000 in crypto,
20 so you think as a factual matter, there's no issue of
21 foundation. Putting that to the side, given his role with
22 Mango Markets, at the time of the alleged offense, if he had
23 known about the hypothetical conduct, is there something else
24 that he could have done to have either prevented Mango users
25 from losing funds, some other basis for foundation on a factual

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1 level?

2 MR. DAVIS: I think I take it to mean could he have --
3 like, was he consulting with Mango at the time?

4 THE COURT: Is there some other way in which it would
5 have been the tie to something different happening if the
6 represented facts had been different?

7 MR. DAVIS: So, your Honor, I think the primary basis
8 is he was an investor, like a person with deposits.

9 THE COURT: And you're going to elicit that testimony
10 before these questions are asked?

11 MR. DAVIS: Correct. Yes, your Honor.

12 THE COURT: So I'll overrule the objection on
13 foundation grounds, as well.

14 MR. KLEIN: Your Honor, I have a question that's sort
15 of related to that. In reading your rules, I saw that you
16 don't want speaking objections. I understand that. If
17 someone's objecting, do we just say "objection," or do we put,
18 "Objection, hearsay"?

19 THE COURT: If I ask you for additional explanation,
20 if I ask for grounds, you should try to limit it to one or two
21 words, if possible, so we don't have a speaking objection. In
22 rare circumstances, if you need to get more deep in the woods,
23 you can ask for a sidebar, but let's try to limit those as much
24 as possible.

25 MR. KLEIN: Understood, your Honor.

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1 And they proffered how they're going to bring it in,
2 but it may come in differently and I may still want to object
3 at that moment.

4 THE COURT: And I will, if it comes at that time, I
5 will understand your objection to be along these lines, but if
6 the message isn't getting across, then you can certainly give a
7 little bit more detail, and if we need a sidebar, we'll take
8 it.

9 MR. KLEIN: Yes, your Honor.

10 THE COURT: So those are those two issues.

11 Do we need to, at this time, get into the 800 series
12 documents and any remaining exhibits from yesterday or is that
13 something we should take up at a later recess? Is that going
14 to come up in the first couple witnesses?

15 MR. BURNETT: So the 800 documents will come up with
16 the third witness today. It's kind of like lateish or midway
17 through the third witness. My expectation is that will be
18 after the 11:30 break, but it is going to come up today.

19 THE COURT: So Mr. Hernandez, where are we with the
20 jury? Are they here? If you can go check and we'll continue
21 our discussion here. I just don't want to keep them waiting if
22 we can avoid it.

23 I have, I think juror No. 6, Ms. Martinez informed the
24 courtroom deputy that her niece was a victim of domestic
25 violence. She wasn't sure if she was supposed to mention it

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1 yesterday, but she wanted to bring it to the Court's attention.
2 So I'll ask the parties if, given that information, if either
3 side would like to inquire further with Ms. Martinez. If so,
4 then we can certainly have counsel and we can have Ms. Martinez
5 join us in the robing room and have a further inquiry with her.

6 So anything from the government?

7 MR. BURNETT: No, your Honor.

8 THE COURT: Mr. Klein?

9 MR. KLEIN: No, your Honor.

10 THE COURT: Thank you very much.

11 And we'll enter this into the record of the case just
12 so we have it there.

13 All right. On the 800 series, who's going to address
14 this from the government's side?

15 MR. BURNETT: I am, your Honor.

16 THE COURT: As I understand it, there are three
17 objections made. You're not going to be able to authenticate
18 these exhibits. They're all inadmissible hearsay. How are you
19 going to get them in? And then there's a 402, 403 objection.
20 Maybe you can walk me through what your plan is with these
21 documents.

22 MR. BURNETT: Sure. So I think like the easiest one
23 to focus on -- because all we really need is to get one of
24 these documents in. So set aside the way back machine
25 documents. One of the documents and two of the documents we

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1 planned to offer are public press releases that are announcing
2 the launch of this future. I think we're able to get that in
3 because it's coming in through our expert witness K.K. Jain.
4 Under Rule 703, experts are allowed to rely on hearsay to the
5 extent something they would normally rely on in their field,
6 and we expect Mr. Jain will say that, as someone who like works
7 in finance, one of the ways that you like figure out what types
8 of products are out there to invest in is by figuring out like
9 what the press releases have been that said about, you know, a
10 product coming out and like how it works.

11 THE COURT: Well, doesn't that mean he can rely on the
12 document, that the document itself would not come into
13 evidence?

14 MR. BURNETT: I think under -- I can't remember if
15 it's 704 or if it's part of 703. Basically, the document --
16 we'd be fine with him just testifying for starters.

17 And second, I think the document can come in if it
18 would be helpful to the jury under, I think it's 704, but I'm
19 drawing a blank on the number right now. That's the
20 admissibility issues.

21 THE COURT: Which exhibit are you referring to?

22 MR. BURNETT: That would be --

23 THE COURT: Is it 897?

24 MR. BURNETT: I believe that's right, your Honor.

25 THE COURT: This is titled, crypto exchange Egonex

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1 expands suite of professional trading products with launch of
2 dated futures.

3 MR. BURNETT: That's right, 897.

4 THE COURT: Okay. So you're going to put this
5 document in, even though this document says that a dated
6 futures contract enables users to enter into a binding
7 agreement to buy or sell the underlying asset, in this case
8 BTC.

9 MR. BURNETT: The key is there three bullets below on
10 the second page. They talk about how it's a BTC USDC future
11 the way it's traded.

12 THE COURT: Right. In the bullets, and I think this
13 is the defense's argument, when there's a reference to USDC,
14 that is the settlement price, meaning the price of the futures
15 contract, which is for the underlying asset being Bitcoin, or
16 in some of these other documents Ethereum or one of these other
17 cryptocurrencies. So how do we deal with that, especially
18 given the hearsay issue? It's almost like these three issues
19 kind of are tied up together because if you had someone from
20 Egonex who is here and you ask that witness, what is it that
21 you were selling, it is, I think from the defendant's
22 perspective, likely that that person would say, oh, these were
23 Bitcoin futures contracts. Were they futures contracts in
24 USDC? No, that was the price, and we used that instead of cash
25 because cash has hedging risks and other concerns, and so we

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1 used USDC instead. But we don't have that person and, instead,
2 we have someone who doesn't have any personal knowledge of
3 these documents, who -- and I'll take a look at rule 704, but
4 my usual understanding is that an expert can just rely on
5 whatever that expert wants to rely on within reason, but then
6 the opinion is the only thing that's actually in the record.
7 And so, it raises a number of concerns in the Court's mind.

8 MR. BURNETT: So unlike whether documents come in
9 versus just testimony, I think we have a basis to put the
10 documents in, but if it's just testimony, we're okay with that,
11 too. So I think the 402-403 piece is kind of the crosscutting
12 issue.

13 THE COURT: I don't know that that's right because the
14 thing that has to be established is that at or before the time
15 of the offense, there were futures contracts in USDC. And I
16 understand there's a dispute between the parties as to whether
17 it matters whether -- what weight the two things have in a pair
18 transaction.

19 But isn't that the thing that has to be in evidence?
20 And how is your expert going to opine on that thing that he has
21 no personal knowledge about?

22 MR. BURNETT: Our understanding, your Honor, the way
23 703 works is the expert can testify as to things the expert
24 would rely on and what the expert learned through their
25 research and work on the case, and really the hearsay question

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1 is whether the underlying document that they relied on can come
2 in.

3 I'd add, this is basically what the defense's expert
4 is doing, as well, to the extent Mr. Sheridan is going to be
5 talking about here's how Solana works, here's how Mango Markets
6 works, here's how other things work. They're all relying on
7 hearsay to talk about that. That's what experts do, they do
8 research on things and they talk about that. So I think the
9 expert can describe what the expert has learned through his
10 research, and the rub of the admissibility issue is as to the
11 underlying document, not as to the testimony about what he
12 learned.

13 THE COURT: Understood.

14 Who's going to address this from the defendant's side?

15 MR. GREENSPAN: I will, your Honor.

16 THE COURT: So the government says, look, there's at
17 least this document, 897, that whether it comes in or whether
18 Mr. Jain uses this as the basis of his opinion, that's enough
19 from the government's perspective. What's your response?

20 MR. GREENSPAN: I think you adequately summarized our
21 letter, but the response is that Mr. Jain has no foundation for
22 this opinion. If you look at the documents, I think -- sorry,
23 there's a bit of a feedback here. The key document is 889,
24 which is really the only document that shows anything about
25 what these futures actually were, and it shows that the asset

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1 is clearly stated as Bitcoin Ethereum, or anything else, it's
2 not USDC. The price is \$30,000, it's clearly the price of
3 Bitcoin. The price is listed in U.S. dollars, the dollar sign
4 is in front of it. There's absolutely no question from the
5 documents that these are Bitcoin futures. The press release
6 says that, the other documents say that. The other exhibits
7 that the government had in its packet say the same thing. The
8 testimony just has no basis whatsoever.

9 THE COURT: Well, isn't the basis going to be the
10 expertise of the expert and understanding based on his
11 knowledge of the financial markets what these types of
12 documents would represent in terms of the nature of the
13 security? And how is that different from what your experts
14 will do when they take the stand?

15 MR. GREENSPAN: I don't expect our experts to give
16 totally unfounded opinions. That's, in our view, what this is.
17 They gave us the documents that show what he's relying on and
18 they say the exact opposite. I mean, there was clearly no USDC
19 futures markets. Their documents essentially prove that.

20 In addition to the unreliability of these documents,
21 there's a further issue which came up yesterday, wasn't really
22 discussed and isn't in our letter, which is that Egonex went
23 out of business in August 2022. It didn't even exist at the
24 time of the facts at issue. And so, there's the further
25 question of whether this is even relevant.

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1 I know that in the Court's current proposed
2 instruction, a commodity in the past before the events would
3 qualify, but I think that question hasn't really been resolved
4 with any sort of discussion among the parties.

5 THE COURT: Well, I don't know if there's any case law
6 on that particular issue, but the statutory language indicates
7 that contracts for future delivery are presently, or in the
8 future, dealt. And so, that would seem to indicate that it's
9 dealt at the time of the offense or before the time of offense
10 that would count. And the government had argued that it
11 doesn't make a lot of sense to use the exact time of the
12 offense because then what do you do if there were no contracts
13 dealt at 10:12 a.m. as opposed to 9:12 a.m.? You'd have to
14 figure out what that line is, which I don't think there's any
15 evidence to support that in the record. But I understand the
16 argument --

17 MR. GREENSPAN: If I may --

18 THE COURT: Let me ask the government: Is there any
19 other evidence that you have, other than these documents, that
20 would support a futures market and USDC at or before the time
21 of the offense?

22 MR. BURNETT: I think one of the issues that might be
23 going on here is what the meaning of -- what it means to have a
24 futures market in USDC. And so, I think addressing that might
25 help clarify the way this should go.

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1 What I understand the expert will testify is that
2 these were BTC/USDC futures, which means that what would happen
3 is someone would enter into an agreement to -- based on the
4 value of Bitcoin USDC at some specified date in the future,
5 that time would pass. So say three months passed and you get
6 to the settlement time, there would be a mechanism that the
7 exchange had to find what the price was, the BTC/USDC price was
8 at the settlement time, and then the parties, using that kind
9 of pricing tool, would settle in Bitcoin.

10 So basically, if Bitcoin had gone up relative to what
11 the contract value was, one side would give over Bitcoin, and
12 if Bitcoin had gone down relative to USDC, the person would
13 give over Bitcoin.

14 So our expert will not testify that USDC was handed
15 over. What our expert will testify is that this is a USDC
16 future because this operates the same way that basically
17 cash-settled futures are. Basically, what happens is, it's a
18 Bitcoin-USDC future that is settled with the exchange of
19 Bitcoin.

20 The best example would be like CME right now, so the
21 Chicago Mercantile Exchange has Bitcoin U.S. dollar futures,
22 and that's based on the relative value of Bitcoin and the U.S.
23 dollar at the end of the futures period. The way the exchange
24 happens is the parties just exchange dollars, they don't
25 exchange Bitcoin, but that's clearly a future in Bitcoin, even

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1 though Bitcoin isn't getting exchanged at the end of the day,
2 it's just a cash settled future in Bitcoin.

3 THE COURT: In that example, would dollars be
4 commodity?

5 MR. BURNETT: No, but that's not because dollars or
6 like things being exchanged, it's because dollars have like a
7 special carving out through like the treasury acts from
8 being --

9 THE COURT: Absent the carve-out, you would say, yeah,
10 dollars are --

11 MR. BURNETT: Yeah. So, for instance, this I think
12 comes up in the context of like -- so basically foreign
13 currency is a -- foreign currency is very clearly a commodity
14 under the Commodities Exchange Act. So if this were like a
15 Bitcoin, like Hong Kong dollar contract, then yes, Hong Kong
16 dollars, like a commodity in that context, even though that is
17 a currency that is pegged to the dollar.

18 THE COURT: Let me ask you, you have these -- so I got
19 you in terms of what the explanation is going to be. My
20 concern is that the basis for saying, well, here, let me tell
21 you what these things are, is that the basis for that is like a
22 couple of websites. And it's impossible for the Court, looking
23 at these websites, to understand exactly what the nature of
24 these transactions was. And so, you would think that under
25 normal circumstances, you would have someone from one of these

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1 platforms come in and just say, here's what was trading in
2 2022, let me just tell you about it, okay, you're off the
3 stand, and the expert says, well, I heard the testimony of that
4 witness and I have these documents, for instance, a prospectus
5 or other summary that outlines the parameters of the
6 transaction, so now let me tell you what that is. And I think
7 that's essentially what your expert would plan to do, except we
8 don't have those intermediate links. All we have are these
9 website pages, which some of them are just like pretty top
10 line, they're pretty generic as to what's going on.

11 And so, I understand the concern from the defense is
12 this seems like kind of a scenario where the hearsay rules have
13 to be rigorously enforced because, otherwise, your expert can
14 say whatever he wants as to what was trading in 2022 based on
15 very little -- a thin basis. And what is anyone be supposed to
16 say about that?

17 MR. BURNETT: I think this is a weight question, and
18 the expert is allowed to testify as to what they've learned
19 based on their -- the expert's research. And if the defense
20 thinks that these documents don't support what the expert's
21 testimony is, even if I can't put them in, the defense is
22 certainly free to use them to cross examine the expert about
23 how they have no real basis for the opinion.

24 THE COURT: If these documents are out in the sense
25 that your expert can't do what you're planning on, would USDC

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1 be out as a commodity in this case?

2 MR. BURNETT: So, yeah, I think the only way USDC
3 would be in is the commodity would be if this Court were to
4 revisit and adopt the CFTC's definition of what a commodity is,
5 which looks at the virtual currency.

6 THE COURT: Understood. I'm going to think about this
7 and we'll pick it up at the lunch break.

8 MR. BURNETT: Just on the virtual currency point, if
9 the Court is open to reconsidering that, even if not deciding
10 it right now, but deciding it down the line, I'd just ask that
11 we know at the break because there are other exhibits we have
12 about virtual currencies having a futures trading market back
13 at this time that we could easily put in, but I just don't want
14 to not have a foundation for an instruction later.

15 THE COURT: Understood. Understood. I will let you
16 know on that.

17 Anything else before we bring the jury in?

18 MR. KLEIN: Your Honor, two quick things from the
19 defense. We noticed in your rules you want us to refer to
20 people by their formal names. Is it okay in opening and
21 closing if we refer to our client as "Avi" or "Avraham" instead
22 of "Mr. Eisenberg"?

23 THE COURT: Yes.

24 MR. KLEIN: The second is we plan to reference one of
25 their witnesses. We want to just confirm that Victor Li is

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1 still going to be called.

2 MR. BURNETT: I don't think we'd know at this point
3 for sure if he will or will not be called. He's on our witness
4 list, but we can't be forced to commit to a witness down the
5 road.

6 THE COURT: Based on what you know now, is it likely
7 he's going to be called? That's all I'm asking. Let's just
8 try to reduce an issue of juror confusion if we can,
9 understanding that you're not going to be tied to anything that
10 you say, but just based on what you know right now, do you plan
11 to call him?

12 MR. BURNETT: I'd say right now it is more likely we
13 will not call him than we will call him.

14 THE COURT: Anything else before we bring the jury in?

15 MR. KLEIN: That was it, your Honor, from the defense.

16 THE COURT: Anything else, Mr. Burnett?

17 MR. BURNETT: No, your Honor. Actually, just a minute
18 for a bathroom break?

19 THE COURT: Yes.

20 (Recess)

21 Who's opening for the government?

22 MS. HUANG: I am, your Honor.

23 THE COURT: And who's opening for the defense?

24 MR. TALKIN: I am, your Honor.

25 (Continued on next page)

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(Jury present)

THE COURT: Welcome back, members of the jury. I hope you had a good evening and were able to catch some of the recap of the eclipse. Again, I apologize for having you in here when it actually happened.

So I'm going to give you just some brief preliminary instructions before we get started today and then we're going to have opening statements and proceed with there trial. Some of this is going to be repetitive from what you heard yesterday, but it is so vitally important, so I apologize in advance for repeating myself.

Members of the jury, now that you have been sworn as you were yesterday, I'm going to give you some brief instructions to help you prepare for this trial.

To begin with, you are here to administer justice in this case according to the law and the evidence. You are to perform this task with complete fairness and impartiality and without bias, prejudice, or sympathy for or against any of the parties. It will be your duty to find from the evidence what the facts are. You and you alone will be the judges of the facts. You will then have to apply those facts to the law as the Court will give it to you. You must follow that law whether you agree with it or not.

Nothing the Court may say or do during the trial is intended to indicate or should be taken by you as indicating

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1 what the verdict should be. The evidence from which you find
2 the facts will consist of the testimony of witnesses,
3 documents, and other things received into the record as
4 exhibits, as well as any facts that the parties agree to or
5 stipulate to or that the Court may instruct you to find.

6 Now, certain things are not evidence and must not be
7 considered by you. I will list them for you now.

8 First, statements, arguments, and questions by lawyers
9 are not evidence. Nor are my own statements to you evidence.
10 Only the answers given by the witnesses and the documents
11 admitted as exhibits are evidence.

12 Second, objections. You probably heard them on TV,
13 you've seen them on TV. Objections to questions are not
14 evidence. The lawyers have an obligation to their clients to
15 make an objection when they believe evidence being offered is
16 improper under the rules of evidence. You should not be
17 influenced by the Court's ruling on an objection. If the
18 objection is sustained, ignore the question. If it is
19 overruled, treat the answer like any other.

20 If you are instructed that some item of evidence is
21 received for a limited purpose only, you must follow that
22 instruction.

23 Third, testimony that the Court has excluded or told
24 you to disregard is not evidence and must not be considered.

25 Finally, anything you may have seen or heard outside

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1 the courtroom is not evidence and must be disregarded. You are
2 to decide the case solely on the evidence presented here in the
3 courtroom.

4 Now, when you are determining the facts, keep in mind
5 that there are two kinds of evidence: direct and
6 circumstantial. Direct evidence is direct proof of a fact,
7 such as the testimony of an eyewitness. Circumstantial
8 evidence is proof of facts from which you may infer or conclude
9 that other facts exist. The word "infer" or the expression "to
10 draw an inference" means to find that a fact exists from proof
11 of another fact. An inference is to be drawn only if it is
12 logical and reasonable to do so and not by speculation or
13 guesswork.

14 In deciding whether to draw an inference, you must
15 look at and consider all the facts and the light of reason,
16 common sense, and experience. Whether a given inference is or
17 is not to be drawn is entirely a matter for you, the jury, to
18 decide. Circumstantial evidence does not necessarily prove
19 less than direct evidence, nor does it necessarily prove more.

20 Here's an example to help you think about the
21 difference between direct and circumstantial evidence. Now,
22 assume that when you came into the courthouse this morning the
23 sun was shining and it was a nice day outdoors. Also assume
24 that the courtroom blinds were drawn and you could not look
25 outside. Assume further that as you were sitting here, someone

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1 walked in with an umbrella that was dripping wet, and then a
2 few moments later someone else walked in with a raincoat that
3 was also dripping wet. Now, because you could not look outside
4 the courtroom and you could not see whether it was raining and
5 because no witness has testified that it is raining, you'll
6 have no direct evidence of that fact, but on the combination of
7 facts that I have asked you to assume, it would be reasonable
8 and logical for you to conclude that it was in fact raining.
9 That's all there is to circumstantial evidence. You infer on
10 the basis of reason, experience, and common sense from one
11 established fact the existence or the nonexistence of some
12 other fact.

13 Now I'll give you further instructions on these as
14 well as other matters at the end of the case, but keep in mind
15 that you may consider both types of evidence.

16 Now, one of your most important tasks as jurors is to
17 evaluate the credibility of the witnesses who will testify
18 before you. That is how truthful and believable they are.
19 Listen carefully as each witness testifies during both direct
20 and cross examination, and consider whether the witness is
21 telling the truth.

22 Now, it will be up to you to decide which witnesses to
23 believe, which witnesses not to believe, and how much, if any,
24 of a witness's testimony to accept or reject.

25 Now, how do you decide what to believe and what not to

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1 believe? You are to listen to the witnesses, observe their
2 testimony, and then decide as you would decide such questions
3 in your own life. Did they know what they were talking about?
4 Were they candid, honest, open, and truthful? Did they have a
5 reason to falsify, exaggerate, or distort their testimony?
6 Sometimes it's not what a witness says, but how he or she says
7 it that may give you a clue as to whether or not to accept that
8 witness's version of an incident or an event as credible and
9 believable. In short, the way a witness testifies may play an
10 important role in your reaching a judgment as to whether or not
11 you can accept the witness's testimony as reliable.

12 Now, you may hear from law enforcement officials in
13 this case. The fact that a witness may be employed as a law
14 enforcement official does not mean that his or her testimony is
15 deserving of greater or lesser weight than that of an ordinary
16 witness.

17 Now, a few words about your conduct as jurors. This
18 is the part that's going to be repetitive, but it is so very
19 important.

20 First, during the trial, you are not to discuss this
21 case with anyone, nor are you to have anyone discuss it with
22 you. This includes posting anything on the internet about the
23 case, whether it be on personal blogs, Facebook, Twitter, X, or
24 Threads. Until you retire to the jury room at the end of the
25 case to deliberate, you simply are not to talk about this case

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1 with anyone, including your spouse or partner, family, or close
2 friends. Do not even discuss the case with each other until
3 you begin your actual deliberations at the end of the trial.

4 Second, please do not, while you are serving as jurors
5 in this trial, have any conversations with the parties, the
6 attorneys, or any witnesses in this case, whether in the
7 courtroom, in the hallways, in the elevators, outside, or
8 anywhere else. By this, as I explained yesterday, I mean not
9 only avoid talking about the case, do not talk at all even to
10 say good morning or to acknowledge any of these people.
11 Someone seeing a juror in conversation with a party, lawyer, or
12 witness might think that something improper was being
13 discussed. To avoid even the appearance of impropriety then,
14 avoid any such contact or conversations. So I can tell you
15 that when the parties, lawyers, and witnesses pass you in the
16 halls without even acknowledging your presence, they do not
17 mean to be rude, they are simply following the Court's
18 instructions.

19 Third, do not read or listen to anything outside the
20 courtroom that relates to this case in any way. Similarly, you
21 are not to allow anyone to speak to you about this case. If
22 you are approached by anyone to speak about it, politely but
23 firmly tell them that the Judge has directed you not to do so.
24 If any person seeks to contact you about this case, you are
25 required to report the incident promptly to me by sending me a

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1 note through my courtroom deputy, Mr. Hernandez.

2 Also, be sure that I am informed if any person that
3 you know comes into this courtroom. This is a public trial, so
4 this could happen, but it is important that you do not hear
5 from them what may have happened in the court while the jury
6 was not present. If you should see a friend or relative come
7 into court, please send me a note again through Mr. Hernandez
8 at your first opportunity.

9 Fourth, do not try to do any research or make any
10 investigation about the case or the issues presented by this
11 case. For example, do not go onto the internet tonight and
12 research any matters relating to this case. Do not call up
13 your lawyer friends to ask about the type of matters at issue
14 in this case.

15 Fifth, I know that many of you use cellphones, we all
16 use cellphones and the internet and other tools of technology.
17 You must not use these tools to communicate electronically with
18 anyone about the case. This includes your family and friends.
19 You may not communicate with anyone about the case on your
20 cellphone, through email, text messaging, Twitter, Threads, any
21 blog or website, any internet chatroom or by way of any other
22 social networking websites, including Facebook, LinkedIn, and
23 YouTube.

24 Finally, do not form any opinion until all the
25 evidence is in. A case can be presented only step by step,

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1 witness by witness until all the evidence is before you. Keep
2 an open mind until you start your deliberations at the end of
3 the case.

4 Now, you are permitted to take notes during the trial.
5 Mr. Hernandez has given each of you a notepad and pen, I see
6 those in your hands. Please write your name on the cover of
7 the pad. If you do take notes, please do so only in these
8 pads. Remember that any notes you take are for your use only
9 and they are only to be used as an aid for your memory. Your
10 memory controls. If you do take notes, be careful not to get
11 so involved in taking notes that you are not listening to the
12 evidence.

13 Once you are in your deliberations, if there is a
14 disagreement between one juror's notes and another juror's
15 notes or between one juror's notes and another juror's
16 recollection, you can ask to have the court reporter read back
17 the testimony or to have that portion of the transcript sent to
18 you, for it is the official court transcript that controls, not
19 any particular juror's notes.

20 During the course of the trial, exhibits will be
21 received into evidence. They will be marked by exhibit number.
22 If there is an exhibit that you are interested in seeing during
23 your deliberations, write down the exhibit number in your
24 notes. At the end of trial as you begin your deliberations, we
25 will provide each of you with a list of all the witnesses who

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1 testified during the trial as well as a list of all the
2 exhibits that have been received into evidence so that you can
3 ask us if you want to look at something.

4 We're now going to begin the trial. As I told you
5 earlier, the trial is expected to be done no later than the end
6 of next week. We'll begin each day here at 9:00 a.m. Please
7 be on time. To help ensure that we start on time, please be in
8 the jury room by 8:45. You all did that today, I appreciate
9 that. And we'll have some refreshments as we had this morning.

10 Now, let me tell you how the trial will proceed.
11 First, we'll have opening statements from the parties. An
12 attorney for the government will make an opening statement,
13 then an attorney for the defendant will do so. The opening
14 statements are neither evidence nor argument. They are simply
15 outlines of what the attorneys believe the evidence will show,
16 and they are given to help you follow the evidence as it is
17 presented.

18 After the opening statements, the government will
19 present its case. The government will call its witnesses, and
20 after each witness testifies, counsel for the defendant will
21 have an opportunity to examine the witness. If that witness is
22 also one of the witnesses the defendant will call on, the
23 defendant may also examine that witness on matters relevant to
24 its defense so that the witness does not have to testify twice.

25 Following the government's case, the government will

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Opening - Ms. Huang

1 rest. The defendant will then have the opportunity to present
2 a defense case should he choose to do so. The defendant is
3 under no obligation to present a defense. The burden remains
4 at all times on the government to prove the elements of each
5 offense beyond a reasonable doubt. Should the defendant
6 present a defense case, any remaining defense witnesses will
7 testify and the government will have the opportunity to cross
8 examine them.

9 After the evidence is completed and all sides have
10 rested, the attorneys will give their summations. This is the
11 opportunity for the lawyers to summarize the evidence and to
12 give their closing arguments. Following the summations I will
13 give you instructions on the law. You will then finally retire
14 to deliberate on your verdict.

15 You have a tremendously important task as jurors. It
16 is to determine the facts. You, and not the Court, are the
17 sole judge of the facts. The Constitution itself recognizes
18 your unique role in our system of justice. So please pay
19 careful attention to the witnesses and evidence received at
20 trial as well as my instructions on the law.

21 We'll now begin with counsel's opening statements.
22 Ms. Huang.

23 MS. HUANG: Thank you, your Honor.

24 Ladies and gentlemen, good morning. Let me tell you
25 about a scam that goes something like this: A con artist finds

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Opening - Ms. Huang

1 a target, someone with money. The con artist tells that
2 victim, I'd like to borrow some money from you, I have this
3 diamond ring, you can hold onto it until I pay you back. The
4 victim sees the diamond sparkle, takes it, and lends the conman
5 the money. But when the victim looks past the sparkle, the
6 victim realizes that the diamond ring is a fake, worthless
7 plastic. Then the conman disappears, leaves the victim with
8 the diamond, and runs off with the money.

9 This case is a modern twist on that basic scam. That
10 man, Avraham Eisenberg, the defendant, he ran the scam. His
11 target, a cryptocurrency exchange called Mango Markets. He
12 didn't use a fake diamond ring, but instead artificially
13 inflated the price of cryptocurrency by over 1,000 percent in
14 just around 20 minutes to make it look like he had something
15 really valuable. And then, once he convinced Mango Markets
16 that he owned a lot of cryptocurrency, he stole its money. He
17 used an asset with a fake and artificial value that he had
18 created to con Mango Markets into allowing him to borrow over
19 \$110 million of cryptocurrency. But ladies and gentlemen, he
20 wasn't really borrowing, he was stealing. Avraham Eisenberg
21 ran off with the crypto. And when the defendant did this, he
22 committed fraud and market manipulation.

23 Before carrying out the crime, he searched words like
24 "fraud" and "market manipulation" on his computer. And during
25 the crime, when he put his plan, his scheme into motion, he hid

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1 his true identity by pretending to be a Ukrainian woman.

2 And finally, after the crime, well, the day after he
3 had the loot in his pocket, he fled the country. This opening
4 is the government's chance to tell you about what we expect
5 you'll see during this trial. Let me start with telling you
6 about what we expect the evidence will show. You'll see each
7 step of the defendant's fraud, therefore in total.

8 Step 1, he found a target. The defendant set his
9 sights on Mango Markets. Mango Markets is a place where people
10 trade cryptocurrency and other financial products based on
11 cryptocurrencies. You'll hear a lot of details about
12 cryptocurrencies during the trial, but the important thing here
13 is that cryptocurrencies can be valuable, really valuable. The
14 defendant chose Mango Markets as a target because it had a big
15 vault of cryptocurrency, a vault worth over \$110 million.

16 That was all the cryptocurrency that customers had put
17 on the platform to trade. Mango Markets also let people borrow
18 from that vault. People could borrow cryptocurrency as long as
19 they had assets on the platform. Think about it kind of like a
20 bank. People can get a loan from a bank, but they need to put
21 something up so the bank can take that back if the loan isn't
22 paid. It was the same on Mango Markets. People could borrow
23 cryptocurrency, but they needed to put up assets that Mango
24 Markets could take if they didn't pay the loan back. For the
25 defendant, Mango Markets and its willingness to lend money made

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Opening - Ms. Huang

1 it an easy target, a pot of money sitting there for the taking.

2 Which takes us to step 2, the plan. The defendant
3 needed to figure out how to get his hands on the cryptocurrency
4 in that vault. Now, remember the example I gave you at the
5 beginning, the conman there used a fake diamond ring to get the
6 loan. The defendant here needed his fake diamond ring.

7 So what was the plan? It had two parts. First, he
8 was going to make a fake asset on Mango Markets, and second, he
9 was going to manipulate the price of that asset to make it seem
10 super valuable.

11 Let's start with that first part, the fake trade.
12 Mango Markets let people place bets on whether the value of a
13 cryptocurrency was going to go up or down. The defendant
14 decided he was going to place a huge fake bet, a fake bet with
15 himself. He created two accounts on Mango Markets. He used
16 one account to make a huge fake bet with the other about the
17 value of a cryptocurrency called Mango, and if the value of
18 that cryptocurrency mango went up, the value of the account
19 that had bet on Mango would go up, too. But, ladies and
20 gentlemen, this wasn't a real bet. The defendant was on both
21 sides of it, he was betting with himself, and Mango Markets
22 didn't know he was on both sides of that fake bet.

23 Which brings me to the second part of the plan, the
24 manipulation. That fake bet he made would only look like a
25 diamond ring if the price of Mango went up, if it went way up.

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1 So the defendant planned to make the price of Mango go up. He
2 planned to pump it. You'll see that was the word, the very
3 word he actually used when he was planning, "pump." The
4 defendant planned to pump up the value of Mango so the fake bet
5 he took on Mango Markets would look like a huge winner, like a
6 really valuable asset. Then he'd be able to use that fake bet
7 to trick Mango Markets into lending him the cryptocurrency he
8 wanted to get his hands onto. That was the fake diamond ring.

9 Which takes us to step 3, the execution of the con.
10 You'll hear that the defendant planned the scheme for weeks,
11 but it took him less than an hour to carry out the entire
12 scheme, less than an hour to run away with over \$110 million
13 worth of cryptocurrency. He started out by taking steps to
14 hide himself. He took over a cryptocurrency account that was
15 in the name of a Ukrainian woman and he created other anonymous
16 accounts. Those are what he used to carry out the scheme, not
17 accounts in his own name.

18 Then he made the fake bet. He used two accounts on
19 Mango Markets to make a huge fake bet on the value of the
20 cryptocurrency called Mango. Ladies and gentlemen, when I say
21 huge, I mean huge. This fake bet was over 100 times bigger
22 than any recent bet on Mango Markets.

23 Next, he pumped up the price of Mango. He went up and
24 bought tons and tons and tons of Mango to make the price of
25 Mango go way, way up. And it worked. You'll hear that it went

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1 up over 1000 percent in just around 20 minutes. Over 1,000
2 percent in just around 20 minutes. That gave the defendant his
3 fake diamond ring. Because the price of Mango went way up, the
4 account that had bet on the value of Mango going up now looked
5 super valuable. It looked like a beautiful diamond ring.

6 So the defendant carried out the con. He went onto
7 Mango Markets and selected the option to borrow cryptocurrency,
8 putting up that fake bet as his collateral. Just like that
9 conman used the ring to get the loan, the defendant used the
10 fake bet to borrow from Mango Markets. And he took everything,
11 all of the cryptocurrency that there was to borrow, emptied
12 that vault.

13 Now you'll see that this wasn't really borrowing, this
14 was stealing. The defendant knew that his fake bet wasn't
15 valuable, he knew that the price of Mango would crash once he
16 stopped buying it. So the defendant took everything he
17 borrowed off of Mango Markets as fast as he could. He ran off
18 with that money.

19 (Continued on next page)
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Opening - Ms. Huang

1 MS. HUANG: That way, when he stopped manipulating the
2 price of Mango and it came crashing back down, Mango Markets
3 was left just holding his worthless fake bet, that fake plastic
4 ring.

5 Which leads us to our fourth and final step, the
6 getaway. Right after carrying out this scheme, the defendant
7 left the country. He knew he had just done something wrong, so
8 he fled. You'll see that just hours after stealing everything
9 from Mango Markets, the defendant bought a plane ticket to
10 leave the country. It was for a flight leaving the very next
11 day. This was a getaway.

12 You'll see that he left in a hurry; that he researched
13 what security he would have to go through while leaving the
14 country. He was trying to get out of the country as fast as he
15 could. And he made it, managing to get out of the country less
16 than 24 hours after his heist. And once he was safely out of
17 the country, the defendant tried to make sure he'd get away
18 with the crime.

19 Now, remember, the defendant had over \$110 million
20 worth of cryptocurrency from Mango Markets. That money
21 belonged to the people who used Mango Markets, ordinary
22 customers. But for the defendant, that was his leverage.
23 Keeping his identity hidden, the defendant anonymously reached
24 out to Mango Markets. He told them he would return some of the
25 cryptocurrency, but only if Mango Markets and all of its

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Opening - Ms. Huang

1 customers promised not to freeze his stolen funds and not to,
2 quote, pursue any criminal investigations. That was his
3 leverage. I'll give some of the money back, but you can't
4 report me to the authorities.

5 This put Mango Markets in an impossible position. And
6 ultimately, Mango Markets agreed to his demands, even though it
7 left the defendant with tens of millions of dollars worth of
8 stolen funds. And Mango Markets had to use its own money to
9 make sure all its customers were made whole.

10 The defendant thought he had it made; that he had
11 bought himself out of trouble; that he had gotten away with it.
12 But a few months later, when he came back to the United States,
13 he was arrested and charged with committing the crimes that
14 you're going to consider in this trial: Fraud and market
15 manipulation.

16 So that's what the evidence will show.

17 How will you hear and see it?

18 Well, first you'll hear from the victims. You'll hear
19 from the customers of Mango Markets who couldn't access their
20 funds when the defendant stole everything from the platform.
21 You'll hear from the people who work on Mango Markets, who will
22 tell you how the defendant tricked Mango Markets into giving
23 him the cryptocurrency. And you'll hear from other witnesses
24 who will explain all sorts of financial terms to you. But at
25 the end of the day, keep your focus on that huge fake bet, the

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Opening - Ms. Huang

1 defendant's fake diamond ring.

2 You'll also see the data that lays out the scheme.
3 Those records will show you how the defendant set up this fake
4 bet on Mango Markets. They will show you that he pumped up the
5 value of Mango by over 1,000 percent to make one side of that
6 fake bet look like a winner, and that he used another person's
7 identity to do it. And they will show you how he stole from
8 the platform.

9 And finally, you will see the defendant's private
10 words and actions that showed that he knew what he was doing
11 was wrong, words and actions that he never thought would end up
12 in a courtroom.

13 You will see that he sent messages about planning the
14 scheme, messages in which he talked about how he was looking
15 for a target and planned to pump the price of Mango. You will
16 see the searches that he ran on his computer before he put his
17 scheme into action, where he looked up words like "fraud" and
18 "market manipulation." And you will see the proof that he
19 booked a flight out of the country just mere hours after
20 committing the crime.

21 You will see and hear a lot about cryptocurrency and
22 computer programs. But at the end of the day, what that man,
23 the defendant, did, boils down to something far older than
24 computers and cryptocurrency: You'll see that it was fraud.

25 Now, the evidence that I've just outlined won't come

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Opening - Mr. Talkin

1 in chronological order. Instead, it will come in piece by
2 piece, and different witnesses will tell you different parts of
3 what happened.

4 And at the end of this trial, we will have another
5 opportunity to speak to you about how all those pieces fit
6 together. But between now and then, I'm going to ask you to do
7 three things:

8 First, pay attention to the evidence.

9 Second, listen to the judge's instructions on the law.

10 And third, use your common sense, the same common
11 sense you use in your everyday lives.

12 If you do those three things, you'll see that the
13 evidence is consistent with only one verdict: That the
14 defendant, Avraham Eisenberg, is guilty. Thank you.

15 THE COURT: All right. Mr. Talkin.

16 MR. TALKIN: Thank you.

17 Good morning, everybody.

18 THE JURY: Good morning.

19 MR. TALKIN: After hearing that, I can understand how
20 sitting here someone would think taking \$100 million in under
21 an hour, something must be wrong here. That doesn't happen in
22 the real world. But that's exactly it. Mango Markets and our
23 client, Avi Eisenberg, they weren't operating the world of
24 traditional finance, they were operating in the world -- they
25 were operating in the sector of cryptocurrency that is

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Opening - Mr. Talkin

1 highly -- that has high risk, is highly speculative, where
2 people go in with their eyes open and they do it because they
3 know they can get a high return in a short period of time,
4 sometimes astronomical.

5 And it's in this world that Avi Eisenberg executed a
6 successful legal trading strategy. And what the government
7 left out of their opening, in order to execute that strategy,
8 that trading strategy, Avi Eisenberg risked 13 million of his
9 own dollars. This was a risk by him. All of that was at risk.
10 And during this trading strategy, at any moment, whether it was
11 in five minutes, 30 minutes or an hour, he could have lost
12 everything.

13 It was not a sure bet, and it wasn't a secretive bet.
14 Because you're going to learn that the bet he made was right
15 there for everyone to see. Anybody who used Mango Markets
16 could see the large bet on one side, could see the large bet on
17 the other side, and could act accordingly. It was no secret.
18 It was no sure thing. It was a legitimate trading strategy,
19 and one that carried a ton of risk.

20 Every trade has a winning side, every trade has a
21 losing side. That's the nature of the business. But it's
22 important to remember being on the winning side of a trade,
23 that's not illegal, no matter how big the win, no matter how
24 fast the win. It is not illegal to execute a trade that is to
25 your benefit.

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Opening - Mr. Talkin

1 I want to briefly go through some of the terminology
2 you're going to hear during this trial. Some you heard during
3 the government's opening. And I will be brief with it and then
4 I'm going to let you know how some of it applies to the legal
5 concepts you're going to hear from the judge at the end of the
6 trial.

7 But I have to remind you, whatever I say about the
8 law, it really doesn't matter; it's the individual sitting up
9 there that will give you the law and you will follow the law as
10 he tells you.

11 And then I will finally touch on a few of the facts
12 and evidence that you heard about during the government's
13 opening and that you will hear about during the trial.

14 So I guess a good place to start is Mango Markets.

15 Mango Markets is not a person, it's not a company,
16 it's not an organization. It is computer programs that run on
17 the internet. It is a series of what are called smart
18 contracts. Smart contracts are virtual electronic contracts.
19 And these contracts execute on something called the blockchain.
20 And the blockchain is really nothing more than a public ledger
21 that everyone can see that shows which transactions the smart
22 contracts are executing, including those executed by Avi
23 Eisenberg.

24 A commodity and a swap, you're going to hear both of
25 those terms. I'm not going to even begin to try and define

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Opening - Mr. Talkin

1 those for you, and I'm very glad that the judge will be the one
2 to do that.

3 But what's significant about that is remember, and
4 it's very important, the Mango token is not a commodity and you
5 will hear no evidence to the contrary. Additionally, because
6 of that, you will hear many contorted and stretched arguments
7 from the government. You will see evidence that they tried to
8 produce to try to convince you that, sure, the Mango token
9 isn't a commodity. But guess what? There's something called
10 USDC, United States Dollar Coin. That's a commodity. The
11 evidence will show you that it is not.

12 Well, the Mango perpetual, that's the bet we're
13 talking about. That's something called a swap. The evidence
14 is going to show you that it's not a swap. And because that's
15 what the evidence is going to show you, the government can't
16 even get out of the gate on the first two counts of this
17 indictment. And what I mean is Avi Eisenberg is not guilty of
18 either of the commodities counts that you'll hear charged to
19 you right away, before we analyze the evidence any further.

20 Another term you're going to hear is "borrow." Now,
21 that's not a new term in the world of finance. But how it's
22 used in this case is very different. And it's very important
23 for you to understand what the evidence says about a borrow;
24 because it refutes everything the government just said in their
25 opening argument.

O49VEIS2

Opening - Mr. Talkin

1 First of all, the loan is permissionless. It does not
2 require any identification. It does not require an email, a
3 Social Security number, an address. Of course, the trade he
4 made was anonymous, because that's exactly what Mango Markets
5 touted, they touted themselves as permissionless. You can come
6 here and be anonymous. Yet the government wants to argue that
7 that's something untoward, something that shows he was hiding
8 his identity.

9 There is no investigation of the borrower's
10 creditworthiness; in other words, there's no underwriting. It
11 doesn't matter -- not only doesn't it matter who you are, it
12 doesn't matter what your financial situation is. There is no
13 ending term to the loan or to the borrow, as we call it. It
14 can go on forever. And because of that, there is obviously no
15 ending date.

16 And most importantly is the loan is executed pursuant
17 to a detailed agreed-upon smart contract that handles the
18 collection of a debt and, in doing so, it totally excludes --
19 it totally excludes the intent of the borrower to repay the
20 loan, and here's what I mean by that:

21 The evidence is going to show you that these loans are
22 automatically paid back. There's a process in place. The
23 first thing that happens is that the collateral is taken, the
24 collateral that allowed the individual to take the borrow is
25 taken away. And if for some reason that doesn't cover the

O49VEIS2

Opening - Mr. Talkin

1 balance of the loan, there's an insurance fund on Mango
2 Markets, and that insurance fund will pay the balance. And if
3 that doesn't happen, it's known by everyone on Mango Markets
4 and agreed upon that the balance will be spread out among
5 everyone on the Mango Markets. But entirely absent from that
6 is anything where the borrower has to profess that they have an
7 intent to repay the loan. And that's critically important.
8 Because a lot of the government's case, as you're going to hear
9 from the evidence, relies on the lack of intent to repay.

10 But I'm telling you right now, the lack of intent to
11 repay has nothing whatsoever to do with this case, and the
12 evidence shows you that. Because the government - and I know
13 this becomes obvious, but the government is saying, and they
14 will say to you and they'll try to have evidence that will show
15 you, that the lack of intent to repay was something called an
16 omission or a misrepresentation, something that Mr. Eisenberg,
17 Avi Eisenberg, was obligated to tell everybody. But in
18 reality, it doesn't even exist. And you'll see that the
19 government is basing their case on an obligation that doesn't
20 exist. And I don't think you need me to tell you that an
21 obligation that doesn't exist doesn't create an obligation at
22 all.

23 I want to briefly touch on some of the evidence you're
24 going to hear in this trial, some of which was talked about by
25 the government.

O49VEIS2

Opening - Mr. Talkin

1 The government says that Mr. Eisenberg conducted this
2 transaction anonymously. I told you, first of all, of course
3 he did because that's what Mango Markets wants you to do.
4 You'll see their paperwork and everywhere, permissionless,
5 permissionless, permissionless. No KYC. That's a term you'll
6 learn, know your client. Zero. They tout that.

7 But more importantly, what the government didn't tell
8 you is that these transactions, the money for them that he
9 risked, came in the way -- an account at Circle -- and you'll
10 learn about Circle -- that was in his name. It was there for
11 everyone to see, Avraham Eisenberg. And the money went out, it
12 went through that same account in the name of Avraham
13 Eisenberg.

14 Now, we're not here to argue about the facts right
15 now. But I use that as an example of why the judge tells you
16 you have to keep an open mind till you hear everything. It's
17 easy to make conclusions. I'm one of those people, I have to
18 admit to it. You hear something and that's it. That's why
19 being a juror is a tough job. It's a little counterintuitive.
20 But the judge this morning told you, the way to approach a
21 trial -- and this is a time in your lives that those just aren't
22 words, those are of the utmost important to you, to the
23 government, and to Avi Eisenberg.

24 The government touched on some chats and words of Avi
25 Eisenberg. I ask you along that same vein, keep an open mind.

O49VEIS2

Opening - Mr. Talkin

1 Because when you look at the whole chat, you look at the
2 context in which they were said. And you look at his actions.
3 You will see that not only are those chats not incriminating,
4 they show you that he did not have an intent to deceive or
5 defraud. They show you that he did not have an intent to
6 commit a crime.

7 And his leaving the country similarly shows you his
8 lack of intent to commit a crime or the belief that he had done
9 any conduct that was illegal. Because when Mr. Eisenberg
10 bought his ticket to leave, it was well after he had already
11 been identified as the individual who made this trade, and it
12 came well after -- in the same public Discord chats and the
13 same public media chats he was being threatened. And it came
14 after he had discussions where he had discussions with Mango
15 Markets. And it came after he made a decision to let things
16 cool off.

17 And then he came back, under his own name, in a ticket
18 purchased in advance with his own credit card. And he came
19 back to the same place he left from. And he came back after --
20 he didn't just give some money back to Mango Markets, he gave
21 back \$67 million. The evidence is going to show you that. And
22 that's -- again, consider that when you figure out what his
23 intent was. Because intent in this case is critically
24 important.

25 And when you look at the evidence and you examine it,

O49VEIS2

Opening - Mr. Talkin

1 it's going to be clear to you that Mr. Eisenberg did not have
2 an intent to commit a crime. It's going to be clear to you
3 that Mr. Eisenberg was simply making a trade.

4 He does not deny he did any of the trades that the
5 government says he did. He does not do that. He does not deny
6 that he made a profit.

7 But he denies that he committed a crime. And the
8 reason for that is that he did not.

9 At the end of this case you're going to see that
10 Mr. Eisenberg did nothing more than execute a winning trade.
11 And you're going to see that he's not guilty of any of the
12 charges.

13 That you for your time.

14 THE COURT: Thank you, Mr. Talkin.

15 Is the government prepared to call its first witness?

16 MR. DAVIS: Yes, your Honor.

17 The government calls Brian Smith.

18 THE COURT: You may proceed.

19 MR. DAVIS: Thank you.

20 BRIAN SMITH,

21 called as a witness by the Government,

22 having been duly sworn, testified as follows:

23 MR. DAVIS: Judge, may I proceed?

24 THE COURT: You may.

O49VEIS2

Smith - Direct

1 DIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q. Good morning, Mr. Smith.

4 What do you do for work?

5 A. I am the chief operating officer of a software development
6 company.

7 Q. Can you tell us a little bit about what you do as a chief
8 operating officer for a software development company.

9 A. Help with internal operations, as well as general strategy,
10 and also interface with our external clients and stakeholders.

11 Q. And what kind of things do you do when you interface with
12 your external clients?

13 A. Help sell them on some of the products we have, as well as
14 answer any questions, and generally just keep good relations
15 with them.

16 Q. Are you familiar with something called Mango Markets?

17 A. I am.

18 Q. What is Mango Markets at a high level?

19 A. It is a trading platform that operates on the blockchain.

20 Q. What are some examples of things you can trade on Mango
21 Markets?

22 A. So you can do spot trades. So an example of that would be
23 if you had some Bitcoin and you wanted to exchange it for a
24 different digital asset, like Ethereum, then you can exchange
25 the Bitcoin for Ethereum on the platform.

O49VEIS2

Smith - Direct

1 Q. Can you trade any other types of cryptocurrencies on Mango
2 Markets?

3 A. Yes. It had a variety of assets across the digital assets
4 spectrum.

5 Q. And how are you familiar personally with Mango Markets?

6 A. I was a contributor to the platform.

7 Q. What kinds of things did you contribute to the platform?

8 A. I helped monitor its financial position, think about
9 investments of the community treasury, and help communicate
10 those issues to the community.

11 Q. And when you say "community," what do you mean by that?

12 A. There were a network of users, contributors, investors, and
13 just other people around the project.

14 Q. So let's come back to that.

15 Besides contributing, did you personally use Mango
16 Markets?

17 A. I did.

18 Q. And how did you personally use Mango Markets?

19 A. I used it for trading spot assets, as well as other assets
20 that are available for trading there and deposited capital into
21 the platform.

22 Q. Got it.

23 So when you say deposited capital into the platform,
24 can you explain to us what that means.

25 A. That to enable trading, you needed assets within the

O49VEIS2

Smith - Direct

1 platform.

2 Q. And what types of assets did you deposit into the platform?

3 A. U.S. dollar equivalents, as well as other digital assets,
4 like Bitcoin, Ethereum, or Solana.

5 Q. All right. I want to direct your attention to a particular
6 period of time, October 2022. How many assets did you
7 personally have on Mango Markets during that time?

8 A. Roughly, \$10,000 worth.

9 Q. Now, focusing on that time period, was there a time when
10 you were unable to access those funds?

11 A. Yes.

12 Q. What happened?

13 A. The operations of the platform were paused.

14 Q. How did you learn that the operations of the platform were
15 paused?

16 A. I read about it on social media.

17 Q. Was the platform still functioning in this time?

18 A. It was not.

19 Q. Could you access your funds at all?

20 A. I could not.

21 Q. All right. Let's come back to that time period in a little
22 bit.

23 I want to talk about your contribution work for Mango
24 Markets. When did you begin contributing to Mango Markets?

25 A. In the fall of 2021.

O49VEIS2

Smith - Direct

1 Q. And you mentioned some previously, but can you give the
2 categories of issues you contributed on?

3 A. Yes. It was typically financial matters. So kind of
4 monitoring how they were spending money, as well as what money
5 they were earning. And then kind of talking about investments
6 from the community treasury. And then just helping to
7 communicate all of those issues to the broader community.

8 Q. Got it.

9 And when you say "they" in that sentence, who are you
10 referring to?

11 A. So there's, just as I said, a community of stakeholders
12 that were organized in kind of a group known as a decentralized
13 autonomous organization.

14 Q. Now, is the decentralized autonomous organization also
15 called a DAO; is that correct?

16 A. Correct.

17 Q. Can you explain what that means?

18 A. Yes. It's just like a lot of community groups where it's a
19 democratic process, people own the native token of the Mango
20 protocol, and proposals can go up to vote, and the community
21 uses that token to vote on whether a proposal should pass or
22 not.

23 Q. So let's talk about the native token. Can you explain what
24 the native token of the Mango protocol was?

25 A. Yes. It was a token created kind of at the genesis of the

O49VEIS2

Smith - Direct

1 project, and it was freely traded. And so anyone could buy or
2 sell that token. And then it was used to govern the decisions
3 of the project.

4 Q. And what was that token called?

5 A. It was called the Mango token or MNGO.

6 Q. Okay. So that's the Mango token.

7 You mentioned also voting; is that right? Can you
8 explain what types of things were voted on and how that worked?

9 A. Yeah. So there were a lot of votes that went to the DAO.
10 Some were more substantive matters, like whether they should
11 invest the treasury in some function or how fees on the
12 protocol should be set. And then there's also a lot of, you
13 know, smaller votes that were more kind of operational in
14 nature.

15 Q. Did you have any role in drafting the actual code for Mango
16 Markets?

17 A. I did not. I am not a software developer.

18 Q. Are you still contributing to Mango?

19 A. I am not.

20 Q. When did you stop contributing to Mango?

21 A. September of 2022.

22 Q. And at the time you were accessing -- you were unable to
23 access your funds, were you still contributing to Mango?

24 A. I was not.

25 Q. I want to turn now to some basics about the Mango platform.

O49VEIS2

Smith - Direct

1 First off, have there been multiple versions of Mango
2 Markets?

3 A. There have.

4 Q. I want to focus again on this time period of October 2022.

5 What version of Mango Markets was in place during that
6 time?

7 A. Version 3.

8 MR. DAVIS: Judge, may I approach the witness with
9 some exhibits?

10 THE COURT: You may approach.

11 Q. Mr. Smith, I'm handing you a binder with what's been marked
12 for identification as Government Exhibits 1011 and 900. You
13 can take a look at those documents for a second and let me know
14 when you've reviewed them.

15 A. Okay.

16 Q. What are those documents?

17 A. Exhibit 900 is showing the home page of the Mango Markets
18 website. Exhibit 1011 is the documentation for the Mango
19 platform.

20 MR. DAVIS: Your Honor, at this time I'd like to read
21 a stipulation into the record.

22 If we could please pull it up and publish it to the
23 jury when I read it, if the Court would permit. It's
24 Government Exhibit 1701.

25 THE COURT: Any objection?

O49VEIS2

Smith - Direct

1 MR. KLEIN: No, your Honor.

2 THE COURT: Okay. It may be published to the jury.

3 MR. DAVIS: Thank you, your Honor.

4 So this stipulation reads: The parties hereby agree –
5 and then I want to focus on paragraph 3:

6 Government Exhibits 900, 902 through 1002, 1004
7 through 1007, and 1009 through 1011 are true and correct copies
8 of records maintained by Mango Labs.

9 And if we can go to page 2, please.

10 It is further agreed that this stipulation, marked as
11 Government Exhibit 1701, is admissible and may be received in
12 evidence as an exhibit at trial.

13 At this point, your Honor, the government offers this
14 stipulation, Government Exhibit 1701, Government Exhibit 900,
15 and Government Exhibit 1011 into evidence.

16 THE COURT: No objection?

17 MR. KLEIN: No objection.

18 THE COURT: Those exhibits will be admitted.

19 (Government's Exhibits 900, 1011, 1701 received in
20 evidence)

21 MR. DAVIS: All right. Can we please take down the
22 stipulation. And can we publish to the jury what's in evidence
23 as Government Exhibit 900.

24 BY MR. DAVIS:

25 Q. Mr. Smith, can you just explain to us what we're looking at

O49VEIS2

Smith - Direct

1 on this screen.

2 A. Yes. So if you went to the Mango Markets home page, you
3 would see this. And it's kind of the entry point for where you
4 could actually enter the platform and begin using it.

5 Q. And do you see where it says "long and short everything"?

6 A. Yes.

7 Q. Can you please read that and the text beneath it.

8 A. Yes. Long and short everything. Lightening fast. Near
9 zero fees. Permissionless.

10 Q. And what does "permissionless" mean in this context?

11 A. That it is structured as a smart contract on the blockchain
12 and so that anyone can access it.

13 Q. All right. So I'm going to take a step back.

14 If I were a user and I wanted to start trading on
15 Mango Markets, what would I do?

16 A. Via this interface, you could click one of the "start
17 trading" buttons, and then you would connect your wallet, and
18 that enables you to interact with the blockchain.

19 Q. And when you say "connect your wallet," what do you mean by
20 that?

21 A. A wallet is how you hold assets on a blockchain. And so
22 you need to interface from the wallet to what particular
23 protocol you're using in order to interact with that.

24 Q. Got it.

25 So the user has an account and has a wallet.

O49VEIS2

Smith - Direct

1 Now, I want to talk about how a user can do trades on
2 Mango Markets. So what are the types of things a user can do
3 once they have an account?

4 A. Yeah. So the most basic version is kind of spot asset
5 trading. Like I said, you can trade Bitcoin for Ethereum or
6 Solana. There is also a product called perpetual trading.

7 Q. Let's take these, please, in turn.

8 MR. DAVIS: Can we please turn to page 2 of Government
9 Exhibit 900.

10 Q. Mr. Smith, can you please read the text on this screen.

11 A. Every market cross-collateralized, trade spot margined in
12 perpetual futures markets, permissionless and all on-chain.

13 Q. All right. So let's talk about spot trades first.

14 What's a spot trade?

15 A. Yeah. So it's just a classic exchange of digital assets.
16 So if you had \$500 of Bitcoin, you wanted \$500 worth of
17 Ethereum, then you would enter an exchange and you would lose
18 your Bitcoin and then, after that, own the Ethereum.

19 Q. Got it.

20 So what are the users exchanging in a spot trade?

21 A. They are trading the underlying assets from one to another
22 at a given price.

23 Q. Got it.

24 And in the example you just gave, you named two
25 assets. Can you name them again please?

O49VEIS2

Smith - Direct

1 A. Yes. The example I gave was trading Bitcoin for Ethereum,
2 which are two --

3 Q. Sorry. What are those two things?

4 A. Yes. Those are like the two most commonly traded digital
5 assets in the crypto industry.

6 Q. All right. So that's spot trading.

7 I want to talk about perpetual futures markets.

8 What's the difference between a spot trade and a
9 perpetual future?

10 A. A perpetual future is a synthetic instrument which is meant
11 to speculate typically on future price fluctuations, but you
12 don't own the underlying asset.

13 Q. All right. So taking a step back, if I was a Mango user
14 and I wanted to enter into a perpetual future, what am I
15 betting on?

16 A. If you're buying a perpetual, like, for instance, Bitcoin,
17 then you'd be betting that the price of Bitcoin will go up.

18 Q. And in that example, let's say a user buys a perpetual
19 based on Bitcoin, how does that person make money?

20 A. Assume the price of Bitcoin goes up, the price of the
21 perpetual generally tracks the underlying asset. And so then
22 if you bought \$500 worth of Bitcoin, the Bitcoin price doubled,
23 then your investment in the perpetual is also likely to double,
24 roughly.

25 Q. Got it.

O49VEIS2

Smith - Direct

1 So what about the person who sold the perpetual, how
2 does that person make money?

3 A. Typically, they are making the opposite bet, and so they
4 would be betting that the price should go down. So like
5 shorting the price of the asset that they are trading.

6 Q. All right. We talked about two types of trades, spot
7 trades and perpetual trades. I want to talk about another
8 concept now called collateral.

9 What is collateral on Mango Markets?

10 A. That is roughly the value of your portfolio in the
11 platform. And it can be used to take on leverage or borrow
12 assets within the platform.

13 Q. So let's start with what are the types of things that can
14 be collateral for a Mango Markets user?

15 A. Mango accepted a very wide variety of assets as collateral
16 within the platform.

17 Q. Can you please give us some examples of what could be
18 collateral in Mango Markets?

19 A. Yeah. So in addition to the assets that I talked about
20 before, like Bitcoin and Ethereum, it can also be lesser-known
21 crypto assets, including the native Mango token or other tokens
22 that are common on the Solana blockchain.

23 Q. How would a winning perpetual position affect the user's
24 collateral on Mango Markets?

25 A. So generally if the -- you know, you would be having more

O49VEIS2

Smith - Direct

1 value on a winning perpetual position, and then that would
2 translate into more collateral available in the platform.

3 Q. All right. So that's collateral.

4 I want to talk about borrowing now. Could users
5 borrow on Mango Markets?

6 A. Yes.

7 MR. DAVIS: All right. Can we please turn to page 3
8 of this exhibit.

9 Q. Do you see, sir, where it says "don't sell, utilize"?

10 A. Yes.

11 Q. Could you please read this page to the jury.

12 A. "Don't sell, utilize. Earn interest on deposits and take
13 out fully collateralized loans against existing assets. The
14 Mango protocol's risk engine allows you to withdraw borrowed
15 capital when you need."

16 Q. All right. So let's break down this first sentence.

17 It references deposits. Do you see that?

18 All right. What's a user's deposits on Mango Markets?

19 A. Those are any assets that they would deposit, that they
20 would insert into the platform.

21 Q. All right. And do you see where it says: "Take out fully
22 collateralized loans against existing assets"? Do you see
23 that?

24 A. Yes.

25 Q. All right. Let's break that down into two.

O49VEIS2

Smith - Direct

1 What's a fully collateralized loan?

2 A. That means that the value of the assets in the Mango
3 platform are valued -- are greater than what you are taking out
4 of the program.

5 Q. And let's talk about existing assets. What does taking out
6 a fully collateralized loan against existing assets mean?

7 A. That just means whatever assets you have within the
8 platform.

9 MR. DAVIS: All right. Can we please turn to page 10
10 of this exhibit, please.

11 Q. All right. Do you see at the bottom here it says "maximum
12 capital efficiency"?

13 A. Yes.

14 Q. Could you please read the gray text underneath that
15 heading.

16 A. "Every market is cross-collateralized. Mango's risk engine
17 let's you utilize all your assets and derivative contracts as
18 collateral."

19 Q. What does it mean to utilize all your assets and derivative
20 contracts as collateral?

21 A. That when the platform is assessing the value of your
22 portfolio, it looks at every single thing that you have in the
23 platform, including any spot assets that you deposit or open
24 perpetual positions.

25 Q. And how does the amount of a user's collateral on Mango

O49VEIS2

Smith - Direct

1 Markets impact their ability to borrow?

2 A. In general, the more collateral you have, the more you can
3 borrow.

4 Q. So if a user's value of a perpetual position were to go up,
5 how would that impact the user's ability to borrow from the
6 platform?

7 A. That would increase their ability to borrow.

8 Q. Now, I want to talk about collateral and borrowing.

9 When someone borrows from the platform, what is that
10 user expected to do with respect to collateral?

11 A. They are generally expected to keep the collateral value
12 positive and, if not, they will be liquidated.

13 Q. And when you say "collateral value positive," what does
14 that mean?

15 A. Just the aggregate value of their portfolio relative to any
16 borrowings they have.

17 Q. And when someone borrows from the platform, what is that
18 user expected to do with respect to interest payments?

19 MR. KLEIN: Objection.

20 THE COURT: Overruled.

21 A. Interest payments are automatically applied to any
22 outstanding borrowings by the program.

23 MR. DAVIS: All right. Let's turn to page 6.

24 Q. Do you see the box that says "liquidator program"?

25 A. Yes.

O49VEIS2

Smith - Direct

1 Q. Can you please read that to the jury.

2 A. "Liquidators protect the capital of lenders. They help
3 ensure the protocol funds stay safe even when the markets move
4 quickly and borrowers default."

5 Q. Are you familiar with liquidators on Mango Markets?

6 A. Yes.

7 Q. How do they help ensure that protected funds stay safe?

8 A. They are a mechanism that if your collateral drops too
9 much, then they take over the position and sell it to ensure
10 the protocol remains solvent.

11 Q. Have you had any experience with liquidation?

12 A. Yes, I have been liquidated on Mango.

13 Q. And why did that happen?

14 A. I didn't maintain my collateral.

15 Q. Does someone with funds on the protocol, would it matter to
16 you if you knew someone was borrowing from the platform without
17 intending to maintain collateral?

18 MR. KLEIN: Objection.

19 THE COURT: Overruled.

20 A. Yes.

21 Q. Why would that matter to you if someone was borrowing from
22 the platform without intending to maintain collateral on the
23 platform?

24 MR. KLEIN: Objection.

25 THE COURT: Overruled.

O49VEIS2

Smith - Direct

1 A. Because all assets on the platform are aggregated across
2 users. And so if there's a scenario where one user defaults
3 and the protocol incurs a loss, that can result in cascading
4 losses to all users on the platform.

5 Q. So what risks would that present to users' funds?

6 A. That type of behavior means that you could have socialized
7 losses and be unable to recover the assets that other users
8 deposited into the program.

9 MR. DAVIS: All right. Can we turn back to page 3,
10 please.

11 Q. Now, you read this before, but could you read the second
12 sentence, please.

13 A. "The Mango protocol's risk engine allows you to withdraw
14 borrowed capital when you need."

15 Q. All right. Do you see where it says "withdraw borrowed
16 capital"?

17 A. Yes.

18 Q. What does it mean to withdraw borrowed capital from Mango
19 Markets?

20 A. That you can take assets that you borrowed outside of the
21 platform.

22 Q. If a user withdraws borrowed capital from the platform,
23 does the platform have access to it anymore?

24 A. It does not.

25 Q. Where do those funds go?

O49VEIS2

Smith - Direct

1 MR. KLEIN: Objection.

2 THE COURT: That's sustained.

3 Q. Okay. So we talked about perpetuals a little bit earlier.
4 I now want to ask you about how perpetuals were priced on Mango
5 Markets.

6 When a user wants to borrow, wants to buy a perpetual,
7 how is the purchase price set?

8 A. There are typically other traders on the books, and you
9 would be matched against other -- other trades on the order
10 books for your execution price.

11 Q. You mentioned order books. What's that?

12 A. That just means there's bids and asks at various prices,
13 like any traditional stock exchange or other kind of market.

14 Q. And on Mango Markets, who's making those bids and asks?

15 A. Any user can do those.

16 Q. All right. So after someone buys a perpetual and another
17 user sells a perpetual, how is it determined who is winning or
18 losing that bet?

19 A. Prices typically reference something called an oracle.

20 Q. And generally, what's an oracle?

21 A. An oracle is intended to be a composite price that
22 represents kind of the aggregate fair market value of an asset.
23 So it's typically aggregating prices across a variety of other
24 venues to put a market-wide perspective on what pricing should
25 be.

O49VEIS2

Smith - Direct

1 Q. When you say "other venues," what do you mean by that?

2 A. It could be other places on other blockchains that this
3 trades, or also there's something -- centralized venues that
4 are exchanges like Coinbase, and so referencing those prices.

5 Q. Would it matter to you if you knew that a person was
6 intentionally moving the price of perpetuals on Mango Markets?

7 MR. KLEIN: Objection.

8 THE COURT: Overruled.

9 A. Yes.

10 Q. Why would it matter to you if you knew that a person was
11 intentionally moving the price of a perpetual on Mango Markets?

12 MR. KLEIN: Objection.

13 THE COURT: Overruled.

14 A. It means the market is not operating efficiently. And it
15 also means that that's kind of not normal user behavior. And
16 so intentionally moving a price would raise red flags about
17 what that person's intentions are.

18 Q. And what risks would that present to other users on Mango
19 Markets?

20 A. The same --

21 MR. KLEIN: Objection.

22 THE COURT: That's overruled.

23 A. The same risk I mentioned earlier, where all assets are
24 aggregated in the platform. And so any sort of losses to one
25 user can result in cascading losses that impact all users.

O49VEIS2

Smith - Direct

1 Q. All right. I want to direct your attention to October 11,
2 2022.

3 And remind us, were you still contributing to Mango at
4 that time?

5 A. I was not.

6 Q. What, if anything, happened on Mango Markets that day?

7 A. There was an incident where more capital was pulled out of
8 the program than remained in the program, and so it became
9 insolvent.

10 Q. When you say "insolvent," what does that mean?

11 MR. KLEIN: Objection.

12 THE COURT: It's overruled.

13 A. That users were owed more capital than was available in the
14 platform to pay them out.

15 Q. After that happened, was the platform still functioning?

16 A. It was not.

17 Q. At that point in time, could you access the funds that you
18 had on Mango Markets?

19 A. I could not.

20 Q. Approximately how long were you unable to access your funds
21 on Mango Markets?

22 A. Roughly one to two weeks.

23 Q. Did there come a time when you were reimbursed for your
24 funds?

25 A. Yes.

O49VEIS2

Smith - Direct

1 Q. Who decided to reimburse you for your funds?

2 A. There were several votes put up to the DAO.

3 Q. And when you say "the DAO," what do you mean?

4 A. The community that voted on these proposals in the native
5 token.

6 Q. How much did the Mango DAO pay to make users whole?

7 A. Approximately \$42 million.

8 MR. DAVIS: All right. Can we take down this exhibit,
9 please. I want to publish what's in evidence as Government
10 Exhibit 1011. Can we turn to page 2.

11 Q. Mr. Smith, can you generally describe what this document
12 is.

13 A. Yes. It's referred to as documentation, but you can think
14 of it as a user manual for people that use the Mango platform.

15 Q. All right. I want to turn to page 126 of this document.
16 Before we dive into this, one question: Is this document
17 public?

18 A. Yes.

19 Q. Who can access it?

20 A. It's on the internet for anyone to access.

21 Q. And do you see the top of this document, it says "General
22 FAQ"?

23 A. Yes.

24 Q. What does this mean?

25 A. Just general frequently asked questions that users may have

O49VEIS2

Smith - Direct

1 about the platform.

2 Q. All right. I want to focus on one of these questions.

3 Do you see where it says: "What prevents someone from
4 borrowing funds, withdrawing, and running away with it?"?

5 A. Yes.

6 Q. Could you please read that for the jury.

7 A. "Our system checks deposits, positions, and borrows
8 accounts to ensure that an individual cannot withdraw more than
9 their equity, calculated by the value of deposits plus the
10 value of open orders, minus the value of borrows."

11 Q. Was it important to you that someone cannot borrow funds,
12 withdraw them, and then run away with it?

13 A. Yes.

14 Q. Why is it important --

15 MR. KLEIN: Objection.

16 THE COURT: It's overruled.

17 Q. What would happen to the platform if someone could borrow
18 funds, withdraw them, and run away with it?

19 MR. KLEIN: Objection.

20 THE COURT: Overruled.

21 A. If you could withdraw more than the capital that you put
22 in, then, like I said earlier, the platform would end up owing
23 more money to its users than it held in the platform. And so
24 that all users would take losses.

25 MR. DAVIS: Judge, may I have one moment?

O49VEIS2

Smith - Cross

1 THE COURT: You may.

2 (Counsel conferred)

3 MR. DAVIS: Judge, no further questions at this time.

4 THE COURT: Thank you.

5 Mr. Klein.

6 MR. KLEIN: Yes, your Honor.

7 CROSS-EXAMINATION

8 BY MR. KLEIN:

9 Q. Good morning, Mr. Smith.

10 A. Good morning.

11 Q. Where do you work now?

12 A. Chetu Labs.

13 Q. And what is that?

14 A. It is a software development company.

15 Q. What kind of software does it develop?

16 A. Software in the crypto space.

17 Q. And specifically, what kind of software in the crypto
18 space?

19 A. Infrastructure for trading.

20 Q. So you're still involved in the trading activity on the
21 crypto space?

22 A. As an infrastructure provider.

23 Q. You own Mango tokens?

24 A. Yes.

25 Q. How many Mango tokens do you own?

O49VEIS2

Smith - Cross

1 A. Roughly 100,000, I think.

2 Q. How did you get those Mango tokens?

3 A. I received a grant in return for my contributions to the
4 community.

5 Q. And when did you get that grant?

6 A. I don't recall exactly, but I think it was at some point
7 during 2022.

8 Q. And did you purchase other tokens separate from that?

9 A. Yes.

10 Q. When did you purchase those?

11 A. I don't know.

12 Q. How many tokens did you purchase?

13 A. I don't know.

14 Q. You still own those tokens?

15 A. Some of them, but I don't know exactly.

16 Q. Is it 10,000 tokens? Can you give an estimate?

17 A. Probably less than 10,000 tokens.

18 For context, I think the position is worth -- you
19 know, token, not very much money.

20 Q. When did you buy those tokens?

21 A. Periodically.

22 Q. Did you purchase any tokens in the initial token sale or
23 distribution?

24 A. I did not.

25 Q. And you, yourself have used Mango Markets?

O49VEIS2

Smith - Cross

1 A. Yes.

2 Q. Now, there are various versions, rate?

3 A. Yes.

4 Q. Version 1, Version 2, Version 3, now there's a Version 4?

5 A. Yes.

6 Q. And you use Version 3?

7 A. I did.

8 Q. What kind of transactions can you conduct on Mango Markets
9 Version 3?

10 A. Many different types of trades.

11 Q. Walk me through them.

12 A. I don't remember the details of any specific trade, but I
13 bought Solana on the platform; I deposited Ethereum into the
14 platform. I used it frequently.

15 Q. Did you conduct futures transactions?

16 A. I did.

17 Q. And did you use a VPN to do that?

18 A. I don't recall.

19 Q. Do you recall that futures transactions, you needed to use
20 a VPN to log into Mango Markets?

21 A. That is not the case.

22 Q. Do you recall that nominally U.S. citizens were not
23 permitted to conduct future transactions through Mango Markets?

24 A. I do not believe that is the case.

25 Q. Did you do perpetuals?

O49VEIS2

Smith - Cross

1 A. I thought you meant by futures, perpetuals.

2 Q. Okay. I wasn't sure -- so you did perpetuals?

3 A. That's correct.

4 Q. This is in 2022?

5 A. Yes, during 2022.

6 Q. Version 3?

7 A. Yes.

8 Q. Can you walk through, for the jury and me, what you did as
9 a contributor in a little more detail. When did you actually
10 start contributing?

11 A. It was in the fall of 2021.

12 Q. Did you have another job at that time?

13 A. I did not.

14 Q. And how did you find Mango Markets? How did you learn
15 about Mango Markets?

16 A. Social media.

17 Q. And had you traded crypto before?

18 A. Before I began --

19 Q. Contributing to Mango Markets.

20 A. Yes.

21 Q. Okay. So you started in the fall of 2020. What were the
22 first couple things you did as a contributor?

23 A. There were biweekly calls for the community. And so that's
24 how I kind of got my entry point, is I joined those calls and
25 discussed things on the calls and shared ideas.

O49VEIS2

Smith - Cross

1 Q. And when you say "contributions," what were your
2 contributions other than listening in on calls?

3 A. So I helped to track, as I said, the expenses, the
4 emissions of the MNGO token, as well as the fees generated by
5 the protocol. So that was one element of what I did.

6 Q. And Mango Markets is an open source protocol; correct?

7 A. Yes.

8 Q. What does "open source" mean?

9 A. The code is freely available for anyone to breed or access.

10 Q. Anyone in the world?

11 A. Yes.

12 Q. All right. So what else did you do as a contributor?

13 A. Mango had a substantial treasury of assets. And so I also
14 frequently consulted with other parties about whether those
15 assets should be invested in particular ways.

16 Q. Did you write articles about Mango Markets?

17 A. I don't know if I would say it's an article, but I gave
18 updates to the community for a period of time.

19 Q. Did you write blog posts?

20 A. It was on Medium, yes.

21 Q. And what is Medium, for the jury?

22 A. It's just a site for posting blogs or articles.

23 Q. And those articles are open to the public, not just the
24 Mango Markets community?

25 A. That's correct.

O49VEIS2

Smith - Cross

1 Q. You know what a cryptocurrency exchange is, right?

2 A. Yes.

3 Q. And have you heard the term CeFi? C-E-F-I.

4 A. Not especially.

5 Q. You heard the term DeFi?

6 A. Yes.

7 Q. What is DeFi?

8 A. Decentralized finance.

9 Q. What does that mean to you?

10 A. That means typically projects that operate on the
11 blockchain as opposed to in a centralized manner.

12 Q. And by "centralized manner," you mean run by a company,
13 right, or a person?

14 A. Yes.

15 Q. So there are a number of cryptocurrency exchanges that are
16 centralized, aren't there?

17 A. Yes.

18 Q. Run by companies?

19 A. Yes.

20 Q. Coinbase is an example?

21 A. I think so.

22 Q. Do you have a Coinbase account?

23 A. I do.

24 Q. You're aware that they are a publicly traded company?

25 A. I am.

O49VEIS2

Smith - Cross

1 Q. Okay. And there's other centralized exchanges, right, like
2 Kraken?

3 A. Yes.

4 Q. Binance?

5 A. Yes.

6 Q. At one point FTX even?

7 A. That is true.

8 Q. You know about Solana too, right?

9 A. I do.

10 Q. What is Solana, can you let the jury know?

11 A. Solana is a crypto network that enables the execution of
12 code.

13 Q. Is it another type of blockchain?

14 A. Yes.

15 Q. Is it the blockchain that Mango Markets ran on?

16 A. It was.

17 Q. Okay. And you mentioned Bitcoin. That's another type of
18 blockchain?

19 A. Yes.

20 Q. That's separate from Solana?

21 A. Yes.

22 Q. You mentioned Ethereum. That's another type of blockchain?

23 A. Yes.

24 Q. Separate from Solana?

25 A. Yes.

O49VEIS2

Smith - Cross

1 Q. And Solana was launched in 2020, right?

2 A. I don't know the details.

3 Q. Okay. Was it launched after Bitcoin?

4 A. Yes.

5 Q. After Ethereum?

6 A. Yes.

7 Q. And those two, Bitcoin and Ethereum, are two of the more
8 popular ones, right?

9 A. That's correct.

10 Q. And so Solana was a newer blockchain relative to those?

11 A. Yes.

12 Q. I want to talk about Mango Markets for a moment.

13 You're very familiar with Version 3, right, of Mango
14 Markets? You used it?

15 A. Generally familiar, yes.

16 Q. You were a contributor, right?

17 A. To Mango community, yes.

18 Q. And contributed to Version 3 when it was out there?

19 A. As I said, I'm not a software developer, so I contributed
20 no code to Version 3.

21 Q. Understand. I'm not going to ask you -- you didn't
22 contribute code, but you contributed in other ways?

23 A. But not specifically to that program.

24 Q. Okay. But you contributed to Mango Markets when Version 3
25 was out there, right?

O49VEIS2

Smith - Cross

1 A. Yes, I was a contributor while Mango V3 was live.

2 Q. And you used Version 3, right?

3 A. Yes.

4 Q. So you're familiar with Version 3?

5 A. Sure.

6 Q. So let's talk about Mango Markets Version 3.

7 No company controlled that, right?

8 A. No.

9 Q. No individual person; correct?

10 A. No.

11 Q. It's what's called permissionless, right?

12 A. Yes.

13 Q. You called it permissionless earlier, didn't you?

14 A. I was reading from the website.

15 Q. But the website, which you helped, were involved in, Mango
16 Markets community calls it permissionless, right?

17 A. Yes, it said that.

18 Q. And that means that anybody can access Mango Markets?

19 A. To my knowledge, yes.

20 Q. It's also self-enforcing, isn't it?

21 A. Yes.

22 Q. One second.

23 I'm going to talk to you for a moment about
24 transacting on Mango Markets. The prosecutor walked you
25 through the home page for Version 3, right?

O49VEIS2

Smith - Cross

1 A. Yes.

2 Q. So you're familiar with the website?

3 A. Generally.

4 Q. You used it.

5 There was a website for Version 3, that's how you
6 accessed it, right?

7 A. Sometimes.

8 Q. How else did you access it?

9 A. There are a variety of ways to access the program besides
10 the website.

11 Q. Okay. I'm going to take you to -- oh, sorry. And the
12 website address for Version 3 was trade.mango.markets; correct?

13 A. I believe that was the actual trading portal. But the
14 website that we looked at the front page earlier I think was
15 just mango.markets.

16 Q. Let's go to the trading portfolio.

17 MR. KLEIN: Your Honor, I would like to take Mr. Smith
18 to the front page of the trading portfolio to ask a few
19 questions about it. So I'd like to display that to Mr. Smith,
20 but not the jury for a moment.

21 THE COURT: You may.

22 MR. DAVIS: Is there an exhibit number?

23 MR. KLEIN: I'm not offering any exhibit right now;
24 I'm about to though.

25 THE COURT: Can the government see what's being put up

O49VEIS2

Smith - Cross

1 on the screen for everyone except the jury?

2 MR. DAVIS: Yes.

3 THE COURT: Okay.

4 BY MR. KLEIN:

5 Q. It's a little hard to see, but you are at trade -- oh there
6 we go, trade.mango.markets; correct, Mr. Smith?

7 A. That appears to be the address.

8 Q. And we're going to click on English here.

9 A. Okay.

10 Q. So this is the first screen that pops up. Do you see that?

11 A. Yes.

12 Q. I'm going to show you what's marked as Government Exhibit
13 1010.

14 MR. KLEIN: I don't know if you can split screen. I
15 have a physical copy, too.

16 Your Honor, may I approach? This is going to be
17 faster.

18 THE COURT: You may approach.

19 Q. Mr. Smith, I'm showing you what's marked as Government
20 Exhibit 1010.

21 MR. KLEIN: We're going to pop up 1010. Can you see
22 it, Mr. Davis?

23 MR. DAVIS: I see it. Thank you.

24 Q. Do you see Government Exhibit 1010?

25 A. I do.

O49VEIS2

Smith - Cross

1 Q. And what we're showing you on the website live is the same;
2 correct?

3 MR. KLEIN: This isn't in evidence, Judge. I just
4 wanted him to see that it is the same thing. I'm not going to
5 offer it into evidence.

6 THE COURT: I understand. You may proceed.

7 Q. You see Government Exhibit 1010, which has been
8 authenticated in the stipulation that Mr. Davis just read to
9 you? Do you see that exhibit in front of you, the paper
10 exhibit?

11 A. Yes.

12 Q. Do you see what's on your screen?

13 A. Yes.

14 Q. That's the same thing; correct?

15 A. Yes, they appear to be the same.

16 MR. KLEIN: Your Honor, I offer Government Exhibit
17 1010 into evidence.

18 MR. DAVIS: No objection.

19 THE COURT: It will be admitted.

20 (Government's Exhibit 1010 received in evidence)

21 Q. Now, you see there's a --

22 MR. KLEIN: Please display Exhibit 1010. Actually,
23 can I --

24 THE COURT: Well, you're displaying Exhibit 1010, not
25 the --

O49VEIS2

Smith - Cross

1 MR. KLEIN: Yes, that's what I meant. I want to be
2 clear. Sorry. Yes. Is that up for the jury to see now?

3 May we publish it to the jury, your Honor?

4 THE COURT: You may.

5 Q. Let's talk about this for a second, Mr. Smith.

6 This is the opening page of the trading platform for
7 Mango Markets Version 3. Let's start at the top.

8 What does it say?

9 A. "Welcome to Mango V3."

10 Q. Okay. And then you cut down, it describes Mango Markets.
11 And then what does it say, the V3 protocol, can you read that
12 for the jury please?

13 A. "The V3 protocol is in public beta. This is unaudited
14 software. Use it at your own risk."

15 Q. And then there's a checkbox where you can check and say:
16 "I understand and accept the risk." Correct?

17 A. Correct.

18 Q. Thank you.

19 MR. KLEIN: So now I'm going to take that down. Let's
20 turn to Exhibit 900.

21 Q. I'm going to walk through the process of conducting a
22 trade. And you, again, conducted trades on Mango Markets
23 Version 3.

24 So the first step you mentioned was -- was it the
25 first or second step to connect your crypto wallet?

O49VEIS2

Smith - Cross

1 A. Once you went to the trading page, then that's typically
2 the first step.

3 Q. And the wallet could have different types of tokens, it
4 didn't just have to have Mango; correct?

5 A. Correct.

6 Q. There were a number of tokens that you understand trade on
7 Mango Markets?

8 A. Correct.

9 Q. And when I say "trade," I mean perpetuals or spot trade, do
10 you understand that?

11 A. Yes.

12 Q. So the next step after that, I believe, is didn't you
13 deposit some of that token or cryptocurrency into the DeFi
14 protocol; is that right?

15 A. Typically, if you're creating a new account, then yes.

16 Q. Is that the smart contract at that point? You're putting
17 the tokens into the smart contract?

18 A. If you're depositing assets, then you're moving them from
19 your wallet into the smart contract, but still controlled by
20 your wallet.

21 Q. What's a smart contract?

22 A. It is just a computer program that runs on a blockchain.

23 Q. Okay. And then when you deposit those tokens onto the
24 Mango Markets into the smart contract, it doesn't ask you where
25 those tokens are from, does it, the smart contract?

O49VEIS2

Smith - Cross

1 A. Provided they are from your address, then that's like the
2 only check that I'm aware of.

3 Q. So it doesn't ask you if those tokens are stolen?

4 A. Not to my knowledge.

5 Q. Doesn't ask you your name?

6 A. Not to my knowledge.

7 Q. Doesn't ask you your address?

8 A. No.

9 Q. Doesn't ask you why you want to deposit those tokens?

10 A. No.

11 Q. Doesn't ask you what you plan to do with them, the next
12 step at that point?

13 A. No.

14 Q. You don't have to even name yourself when you conduct a
15 trade on Mango Markets, do you?

16 A. I don't believe you do.

17 Q. You don't have to -- so you don't have to identify yourself
18 at all; you can conduct as many trades you want, you don't have
19 to identify yourself?

20 A. That's correct.

21 Q. And again, there's no approval to use it, it's
22 permissionless; correct?

23 A. Yes.

24 Q. It doesn't ask you how long you want those funds to be in
25 there, does it?

O49VEIS2

Smith - Cross

1 A. I don't think so.

2 Q. It doesn't -- so when you deposit -- let me step back for
3 one second.

4 When you go and do a borrow transaction -- let's talk
5 about a borrow transaction for a moment -- it doesn't ask you
6 questions about that either. Does the smart contract ask you
7 anything?

8 A. I mean, there are a variety of checks before you can
9 withdraw from the program.

10 Q. But does it ask you -- when you deposit into the account,
11 does it ask you -- or when you deposit -- sorry. One second.

12 (Counsel conferred)

13 Q. So there is no term on a borrow in Mango Markets, is there?

14 A. What do you mean by --

15 Q. You could borrow the funds forever, as long as you
16 maintain -- right?

17 A. I mean, that depends on a variety of things.

18 Q. But you could, correct? If you maintain -- if your
19 collateral is maintained, you could borrow forever?

20 A. I would say you can borrow indefinitely provided that
21 you're paying ongoing interest and maintaining your collateral
22 requirement.

23 Q. There's no set repayment schedule, is there?

24 A. Separate payments for what?

25 Q. Set repayment schedule.

O49VEIS2

Smith - Cross

1 A. Oh, there is not.

2 Q. You don't have to sign a document, do you?

3 A. No.

4 Q. You don't have to say why you're borrowing the funds, do
5 you?

6 A. Provided that you meet the other requirements, then --

7 Q. You don't have to say why; there's no question that says
8 why are you borrowing these funds?

9 A. That is correct.

10 Q. In fact, the smart contract doesn't even ask you about
11 repayment, does it? There's no specific question from the
12 smart contract about repayment, is there?

13 A. I don't follow what you're saying.

14 Q. Does the smart contract send you a message that says, Are
15 you going to repay this?

16 A. It does not.

17 Q. Let me move on and talk about perpetuals for a moment.

18 There is no expiration date on a perpetual trade, is
19 there?

20 A. There is no expiration on a perpetual market typically.

21 Q. You could hold your perpetual forever potentially?

22 A. Indefinitely.

23 Q. Let me talk about the day of Mr. Eisenberg's trades. You
24 mentioned you had some funds on the platform?

25 A. That is correct.

O49VEIS2

Smith - Cross

1 Q. You didn't trade that day, did you?

2 A. I don't think so.

3 Q. And you didn't deposit those funds that day, did you?

4 A. No.

5 Q. Deposit them how far back?

6 A. I mean, probably more than months ago -- or months prior to
7 the incident.

8 Q. Months prior.

9 You didn't know Mr. Eisenberg at the time you
10 deposited those funds?

11 A. I did not.

12 Q. You didn't know he was going to conduct any trades on
13 October 11th, did you?

14 A. I did not.

15 Q. Now, the day of Mr. Eisenberg's trades, you mentioned you
16 learned something happened on Mango Markets; correct?

17 A. I learned about the incident that day, yes.

18 Q. Did you say that Mango Markets was -- did you say paused or
19 what was the word you used?

20 A. Operations were paused for the platform.

21 Q. Let's talk about the pause.

22 That day -- and you were following the news that day?

23 A. Somewhat. But there was a lot of news going on, so not all
24 of it.

25 Q. The Mango Markets was paused because the community created

O49VEIS2

Smith - Cross

1 software to pause Mango Markets; correct?

2 A. I don't really follow that question.

3 Q. You don't recall?

4 A. I don't follow the way that you're framing that question.

5 Q. Mr. Eisenberg didn't pause Mango Markets, did he?

6 A. No.

7 Q. The community paused Mango Markets; correct?

8 A. Yes.

9 MR. KLEIN: One moment, your Honor.

10 (Counsel conferred)

11 Q. Were you in Utah when you deposited those funds into Mango
12 Markets?

13 A. I have no idea.

14 Q. You weren't here in Manhattan or New York?

15 A. I don't know.

16 (Counsel conferred)

17 MR. KLEIN: I have one more set of questions, your
18 Honor.

19 Q. I want to show you Government's Exhibit 900.

20 MR. KLEIN: This is in evidence, so I want to publish
21 it to the jury, your Honor.

22 THE COURT: You may.

23 MR. KLEIN: Your Honor, our computer is frozen. I
24 apologize. I'll ask the government --

25 Q. I want to show you Exhibit 900.

O49VEIS2

Smith - Cross

1 MR. KLEIN: Can you please turn to page 10.

2 Q. Do you remember when the prosecutor showed you page 10?

3 A. You mean earlier in this --

4 Q. Yes.

5 A. Yes.

6 Q. He showed you the bottom part; correct?

7 A. Yes.

8 Q. I want to show you now the top part.

9 What does it say at the top?

10 A. "Completely permissionless."

11 Q. And what's next?

12 A. "No KYC. No personal information held. All data is
13 on-chain."

14 Q. You can stop there for a moment.

15 What does no "KYC" mean?

16 A. "KYC" stands for know your customer. It is a check that
17 some financial institutions do if you're interacting with them.

18 Q. And so that means they don't ask things like your address,
19 your name, what country you're in, where you live, things like
20 that?

21 A. Correct.

22 MR. KLEIN: Nothing further, your Honor.

23 THE COURT: Redirect?

24 MR. DAVIS: Can we leave that up, actually, on that
25 page.

O49VEIS2

Smith - Redirect

1 REDIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q. Mr. Smith, remember when counsel just asked you about the
4 phrase "completely permissionless"?

5 A. Yes.

6 Q. Did you understand completely permissionless to mean that
7 anything was permitted on the platform?

8 A. No.

9 Q. Why not?

10 A. I think there are certain things that are kind of obvious
11 that you shouldn't do to abuse or steal from the platform.

12 Q. I want to step back for a second.

13 Do you remember when defense counsel asked you about
14 centralized exchanges?

15 A. Yes.

16 Q. Who runs the smart contract for Mango Markets?

17 A. It is operated autonomously on the Solana blockchain.

18 Q. Who makes decisions about the code for Mango Markets?

19 A. The DAO is involved in approving those types of changes.

20 Q. How does the DAO approve changes for the code, for
21 instance?

22 A. It will make votes that are then implemented directly into
23 the code.

24 Q. I want to pull up now what was shown to you as Government
25 Exhibit 1010.

O49VEIS2

Smith - Redirect

1 MR. DAVIS: Can we pull that up, please.

2 Q. Do you remember when counsel asked you about this on
3 cross-examination?

4 A. Yes.

5 Q. All right. Do you see where it says this is unaudited
6 software?

7 A. Yes.

8 MR. DAVIS: I'd like to pull up Government Exhibit
9 1011, if we could, and do it side-by-side.

10 Q. Now, can you remind the jurors what Government Exhibit 1011
11 is?

12 A. This is the documentation page that is similar to a user
13 manual.

14 MR. DAVIS: And can we go to page 3.

15 Q. And was this in effect for V3, this user manual?

16 A. Yes.

17 Q. Can you read where it says "audit."

18 A. "Neodyme, one of the leading auditing firms in the Solana
19 space, recently reviewed Mango. At the time of writing,
20 September 2nd, 2022, critical and high priority issues were
21 either addressed or acknowledged. You can download their full
22 report here with a link to a PDF."

23 MR. DAVIS: All right. We can take down the right
24 side of the screen for a second.

25 Q. Going back to Government Exhibit 1010, do you remember when

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Smith - Recross

1 counsel asked you about where it says "use at your own risk"?

2 A. Yes.

3 Q. And where counsel asked you where you checked, "I
4 understand and accept the risks"?

5 A. Yes, it's checked on the screenshot.

6 Q. Did you interpret understanding and accepting the risks to
7 mean that anything was allowed on the platform?

8 MR. KLEIN: Objection.

9 THE COURT: It's overruled.

10 A. I did not.

11 Q. Why not?

12 A. Because I think there is no intention of enabling people to
13 manipulate the platform such that you could drain funds and
14 inflict losses on other users unnecessarily.

15 MR. DAVIS: Judge, may I have one moment?

16 THE COURT: You may.

17 (Counsel conferred)

18 MR. DAVIS: Nothing further, your Honor. Thank you.

19 THE COURT: Mr. Klein, anything further?

20 (Counsel conferred)

21 MR. KLEIN: One second. Just one or two things.

22 RECROSS EXAMINATION

23 BY MR. KLEIN:

24 Q. Permissionless goes to a number of things. But I want to
25 focus you on the smart contract. Those are things that run the

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1 trades on Mango Markets; correct?

2 A. Yes.

3 Q. And there are certain inputs that go into a smart contract;
4 correct?

5 A. Yes.

6 Q. And the concept of permissionless means that you don't need
7 permission to put your inputs into the smart contract; correct?

8 A. I'm not sure that's true, but that's a very broad
9 generalization, so I'm not exactly sure what you're asking.

10 Q. Anyone can engage with Mango Markets and use the smart
11 contract, right? It's permissionless.

12 A. Yes. User accounts are permissionless.

13 MR. KLEIN: Nothing further.

14 THE COURT: All right. Thank you very much,
15 Mr. Smith.

16 (Witness excused)

17 THE COURT: The government may call its next witness.

18 MR. BURNETT: The government calls James Farrell.

19 MR. TALKIN: Your Honor, before we call the next
20 witness, can we take a very brief break?

21 THE COURT: Very brief.

22 MR. TALKIN: Very brief.

23 THE COURT: Yes. Let's take ten minutes, come back at
24 11:25. Because we're taking this little break, I think we're
25 going to take our lunch break at noon. So let's try to make

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1 some progress before we go to lunch.

2 All right. So we'll come back in ten.

3 All rise for the jury.

4 (Jury not present)

5 THE COURT: All right. We'll be back in in ten.

6 MR. TALKIN: Your Honor, I apologize. Mr. Eisenberg
7 was holding on for a while, so he really needed to go.

8 THE COURT: Understood.

9 MR. TALKIN: I know it's an inopportune time.

10 (Recess)

11 (Continued on next page)

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1 THE COURT: We ready to go?

2 MS. HUANG: The government's ready, your Honor.

3 MR. KLEIN: Yes, your Honor.

4 (Continued on next page)

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Farrell - Direct

1 (Jury present)

2 THE COURT: Please be seated.

3 Mr. Hernandez, will you swear in the witness.

4 JAMES FARRELL,

5 called as a witness by the Government,

6 having been duly sworn, testified as follows:

7 THE DEPUTY CLERK: Can you please give your first and
8 last name to the Court, and spell your first and last name.

9 THE WITNESS: Sure. My name is James Farrell,
10 J-A-M-E-S F-A-R-R-E-L-L.

11 DIRECT EXAMINATION

12 BY MR. BURNETT:

13 Q. Good morning, Mr. Farrell.

14 A. Good morning.

15 Q. Where do you currently work?

16 A. I work for HD Consulting Service LLC.

17 Q. Does that company provide employees for a particular
18 company?

19 A. Correct. We provide services employees for the AscendEX
20 group of families, most specifically our Romanian operational
21 entity, AscendEX Technology.

22 Q. Is it okay just to keep things simple if I call that group
23 of companies AscendEX for today?

24 A. That's fine.

25 Q. How long have you worked with AscendEX?

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Farrell - Direct

1 A. Roughly two years.

2 Q. Where do you work from?

3 A. I work out of our offices in Midtown Manhattan.

4 Q. What's your job?

5 A. I'm the general counsel for HD Consulting.

6 Q. Can you give the jury a sense of your primary
7 responsibilities.

8 A. Sure. So, as the primary in-house lawyer, I do everything
9 from advising on regulatory issues, litigation, contracts, HR
10 issues, drafting agreements. Basically the run-of-the-mill
11 soup-to-nuts to make our operations run.

12 Q. Let's start by talking by bit about AscendEX and its
13 operations.

14 What kind of company is AscendEX?

15 A. AscendEX is a centralized custodial cryptocurrency
16 exchange.

17 Q. What does that mean?

18 A. What that means is that we provide a venue or a platform
19 where people can deposit cryptocurrencies and then trade
20 cryptocurrencies on our platform, and then withdraw them to
21 whatever various other cryptocurrency exchanges or private
22 accounts they want to.

23 Q. You mentioned that you work out of Midtown Manhattan; is
24 that right?

25 A. That's correct.

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1 Q. Are there other people who run AscendEX who work in New
2 York City with you?

3 A. Correct. So, roughly two-thirds of the people who provide
4 work to support AscendEX's operations are located in New York
5 City. That includes both of the cofounders of the company as
6 well as legal compliance, HR, about half of our programmers,
7 our entire finance team, and about half of our sales team.

8 Q. So I want to talk a bit about how people use AscendEX. How
9 does someone sign up to get onto the platform?

10 A. There are two entryways onto our platform. We have both a
11 mobile app and a website, but they effectively both lead you to
12 the same place, which is our digital asset trading platform.

13 Q. What does someone need to do before they can start using
14 the platform to trade currencies?

15 A. Two things. First, they need to register as a user, which
16 involves logging onto the system, providing certain
17 information, agreeing to our terms of service. Then, in order
18 to be able to utilize the platform, they need to have
19 cryptocurrencies deposited with us and held by us. So they
20 need to arrange to transfer cryptocurrencies from wherever they
21 currently are to a custodial wallet we maintain.

22 Q. Let's break that apart a little bit. I think one of the
23 things you mentioned is that users need to agree to something;
24 is that right?

25 A. Correct. When they log on and establish a user account,

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1 they agree to the terms of service for how our exchange
2 operates and what they agree to do and how they agree to act.

3 MR. BURNETT: Mr. Sears, if you can show to the Court,
4 the parties, and the witness what's been marked as Government
5 Exhibit 1512.

6 Q. Do you recognize this document, Mr. Farrell?

7 A. Yes, I do.

8 Q. What is it?

9 A. This is the terms of service for our platform that was in
10 effect from September of 2021 until about May of 2023.

11 MR. BURNETT: The government offers 1512.

12 THE COURT: It will be admitted.

13 (Government's Exhibit 1512 received in evidence)

14 MR. BURNETT: Mr. Sears, if you can publish that for
15 the jury and zoom in on the top part that says, "Terms of
16 Service."

17 Q. Mr. Farrell, just to help orient everyone, when were these
18 in effect?

19 A. This version of the terms of service was in effect from
20 September 29, 2021 until about sometime around May or so of
21 2023 when I did an update to them.

22 Q. Were these publicly available on AscendEX's website?

23 A. Yes, they were.

24 Q. I'm going to have you look at just a few terms and just
25 read certain terms. I'm not going to have you explain them.

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1 Okay?

2 A. Sure.

3 Q. Let's start on page 1 and go to section 1.6, which is about
4 two-thirds down the page. You see where it says, "Accessing
5 AscendEX"?

6 A. I do.

7 Q. Could you read that sentence, please.

8 A. Sure. You acknowledge and agree that you are not permitted
9 to enter or try to access any restricted area of any system or
10 network of AscendEX, or any AscendEX service provider, under
11 any circumstances, or perform any functions that are not
12 authorized by these terms.

13 MR. BURNETT: Now let's go down to page 4, please,
14 Mr. Sears. Do you see, there is a section titled "Marketplace
15 Conduct Rules." If you could highlight that and just the first
16 paragraph under it, Mr. Sears.

17 Q. Could you read first just the first paragraph under
18 "Marketplace Conduct Rules."

19 A. You acknowledge and agree to abide by the marketplace
20 standard of conduct rules ("marketplace conduct rules")
21 enforced by the company, which are designed to prevent the use
22 of AscendEX for disruptive or manipulative conduct, or
23 deceptive practice, including, but not limited to, disruptive
24 trading and price manipulation. We take our marketplace
25 conduct rules very seriously and it is our policy to take all

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1 the necessary steps to prohibit manipulative conduct or
2 deceptive practices. The following are strictly prohibited on
3 AscendEX.

4 Q. We're not going to go through all of the prohibited
5 practices, I just want to walk through the first three.

6 What's the first one called?

7 A. The first one is called market manipulation.

8 Q. Could you read that, please.

9 A. Sure. Any disruptive trading in or manipulation of the
10 AscendEX marketplace whatsoever is strictly prohibited by the
11 company. Orders placed on AscendEX for the purpose of
12 generating unnecessary volatility, or creating a condition in
13 which prices do not or will not reflect fair market values are
14 prohibited. If you or any related party make or assist in
15 placing any such order, or in any way assist directly or
16 indirectly in carrying out any plan or scheme for the placing
17 of any such order for the purposes of generating unnecessary
18 volatility or affecting market prices, you and any related
19 party will be deemed to have engaged in an act detrimental to
20 AscendEX. Based upon the severity of the market manipulation,
21 there will be a fine of up to 2 million USDT.

22 MR. BURNETT: Let's scroll down to the next paragraph,
23 please, Mr. Sears. And you can group the next two paragraphs
24 together, if you wouldn't mind. Sorry. Just the 4.13.2 and
25 4.13.3.

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1 Q. Do you see 4.13.2?

2 A. I do.

3 Q. What's that titled?

4 A. Fraudulent Acts.

5 Q. Could you read that sentence, please.

6 A. Neither you nor any related party shall engage or attempt
7 to engage in any fraudulent act, or engage or attempt to engage
8 in any scheme to defraud, deceive, or mislead in connection
9 with or related to any order or trade, or any other activity
10 related to AscendEX or the platform services.

11 Q. Finally, if you could read the title and the substance of
12 4.13.3.

13 A. Sure. 4.13.3 Violation of Applicable Laws and Regulations.
14 Neither you nor any related party shall engage in conduct that
15 is in violation of any applicable laws and regulations.

16 MR. BURNETT: Thank you, Mr. Sears. You can take this
17 exhibit down, please.

18 Q. So let's go back now to the account creation and
19 registration process.

20 When someone creates an account on AscendEX, what, if
21 anything, shows up to the folks in the New York City office?

22 A. When someone creates an account in AscendEX, the
23 information is captured in what is called our management
24 portal, which is available to and reviewed by the people in the
25 New York office.

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1 Q. What do employees in the New York office use the management
2 portal for?

3 A. A variety of purposes depending upon what your role is.
4 So, as someone who is in the legal function, what I'm generally
5 using it for, is to find out who our users are, what type of
6 trading they're doing, and to take from it any information
7 responsive to things such as government requests or subpoenas
8 or actions that we're thinking of taking with respect to users.
9 Our finance team will look at it to figure out what
10 transactions were done on the platform and whether the
11 accounting of those transactions and the credits and debits to
12 each individual user trader account are correct based on the
13 trading activities.

14 Q. We'll come back to that point in just a moment, but let's
15 keep walking through the setup process.

16 After someone has created an account, how can they get
17 cryptocurrency onto your platform?

18 A. Sure. The way that they get cryptocurrency onto our
19 platform is they either buy it from someplace else, you know, a
20 service such as like Moonpay that basically exchanges Fiat
21 cards here, real money for cryptocurrency, or they already own
22 cryptocurrency and they maintain it in either a private wallet
23 or on a different exchange account, and they transfer that
24 cryptocurrency to the custodial wallet that we maintain for
25 trading on our platform.

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1 Q. So when someone makes a deposit, where does it go?

2 A. It goes into a custodial wallet or series of wallets that
3 we maintain that hold all of our users' assets in effectively a
4 collective group.

5 Q. How does AscendEX keep track of deposits?

6 A. We have an internal accounting system that is married to
7 our transaction reporting. So when someone sends
8 cryptocurrency from an external wallet to our wallet, that
9 transaction is associated with a particular user. Our internal
10 accounting system then credits that user's account with
11 whatever type of an amount of cryptocurrencies were set.

12 Q. What, if any, role do the folks in the New York office have
13 in managing that deposit process?

14 A. Two major aspects. The first thing is all of the deposits
15 are reviewed by our finance team and our development team when
16 they come in. Then there's also a daily reconciliation that's
17 done for all deposits, all withdrawals, and all trades to make
18 sure that what's reflected in our computer system matches up
19 with what is on the internal ledger that we maintain.

20 Q. Now, once a user has cryptocurrency on the AscendEX
21 platform, what kind of things can they do?

22 A. Primarily two things. First, they can trade
23 cryptocurrencies. So we list cryptocurrencies, we do it in
24 what's known as a pair. So we will list and say, you know, you
25 can agree to buy or sell a certain type of cryptocurrency

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1 valued against a different one. The second thing is we have
2 various opportunities for people to take the cryptocurrency
3 that they have being held by us and use it to earn
4 interest-type payments through certain activities such as
5 staking and things like that.

6 Q. Let's focus on the trading aspect.

7 How does AscendEX keep track of people putting in bids
8 to buy or offers to sell different types of cryptocurrencies?

9 A. Sure. We maintain what's called a centralized order book.
10 So every time a user places a buy offer or a sell offer, that's
11 reflected on our platform in both, you know, the series of the
12 transactions as well as a graphic which shows how many people
13 and at what amounts people are willing to buy a certain
14 cryptocurrency and how many people at what amounts are willing
15 to sell that same cryptocurrency.

16 Q. What ultimately determines the price of a particular
17 cryptocurrency pair on AscendEX at any point in time?

18 MR. TALKIN: Objection.

19 THE COURT: Sustained.

20 Q. How do those bids and offers result in transactions on the
21 platform?

22 MR. TALKIN: Objection.

23 THE COURT: That's overruled.

24 A. We have what's called a smart order routing engine. What
25 that does is that looks at all the people who have offered to

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1 buy a certain cryptocurrency at the price that they designated
2 and all the people who want to sell the same, and if there are
3 any matches in terms of people who want to buy at a price and
4 people who want to sell at a price, the smart order routing
5 engine matches those two things together and executes the
6 transaction.

7 Q. Now, when a trade actually happens, how does AscendEX keep
8 track of that?

9 A. Sure. So when our smart order routing engine says, you
10 know, user A has agreed to sell this token to user B in
11 exchange for a certain countervailing token from user B, that
12 gets reflected in our internal ledger. So our internal ledger
13 which is synced to this will show a debit of one token from
14 user A, a credit of that token to user B, and then the flip
15 side of that transaction, as well.

16 Q. What happens to the actual cryptocurrency?

17 A. Well, because all of the cryptocurrencies are sitting in a
18 custodial wallet that we maintained, it's kind of similar to a
19 bank vault if you're just transferring assets between accounts.
20 So the assets don't actually move out of the vault because all
21 you're doing is internally moving it from one person's account
22 to another. So on our internal ledger, it's showing a movement
23 of those cryptocurrencies, but because they're all held in the
24 centralized wallet, nothing is actually moving in that.

25 Q. Now, what role, if any, do employees in New York have in

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1 managing that ledger that keeps track of who owns what?

2 A. So, every day, there's what's called a trade reconciliation
3 report or reconciliation report. That is reviewed by the
4 development team in New York to make sure that the systems are
5 working correctly, that all of the transactions appear to be
6 reflected in the internal ledger. It's also reviewed by the
7 finance team in New York for basically the same purpose, to
8 make sure that our systems are syncing and we capture all the
9 trades. It seems that all the right amounts have been credited
10 to all the right users. And then the compliance people who are
11 in New York also review that to see if there are any concerning
12 patterns or observations from that trading data that might lead
13 them to start doing further questions or investigate some
14 pattern or practice of trading.

15 Q. How does that compare to similar processes outside the
16 cryptocurrency context?

17 A. I mean, it's roughly very akin to what a broker does in a
18 traditional securities vault.

19 Q. Now, finally, how can people withdraw cryptocurrency from
20 AscendEX?

21 A. When people want to withdraw cryptocurrency from AscendEX,
22 they instruct us through the platform that they want to
23 withdraw. They give us the address of the wallet that they
24 want this sent to, whether it's a private wallet that they
25 maintain on a chain or whether it's a wallet associated with

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1 another cryptocurrency exchange. That request is then reviewed
2 by the finance team in New York, and they approve or reject it.
3 If they approve it, the transaction is then executed by the
4 development team in New York who do the physical act of
5 instructing the wallet to transfer from our custodial wallet to
6 whatever the destination wallet set by the user is.

7 Q. We'll focus on a time in October 2022 in a few minutes, but
8 before we get there, I want to talk about some data of the type
9 you've been testifying about.

10 Have you, before trial, had a chance to review what
11 was marked as Government Exhibits 1500 through 1513?

12 A. Yes.

13 Q. Where were those materials from?

14 A. Those were materials that were produced the -- from
15 AscendEX's records at my request.

16 Q. Were the records made and kept as part of AscendEX's
17 regular business?

18 A. They were.

19 Q. Was the data in those records made at or recorded at near
20 the time of the events at issue?

21 A. They were.

22 MR. BURNETT: The government offers 1500 to 1513.

23 THE COURT: Any objection?

24 MR. KLEIN: No.

25 THE COURT: They will be admitted.

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1 (Government's Exhibits 1500 through 1513 received in
2 evidence)

3 MR. BURNETT: Let's start by taking a look at
4 Government Exhibit 1513, please, Mr. Sears. And this can go to
5 the jury, as well. Let's zoom in on just the top section.

6 Q. Now, what type of document are we looking at here?

7 A. Sure. So this is the user information search section from
8 our management portal that I was talking about earlier.

9 Q. Do you see at the kind of first substantive line, there's a
10 section titled "Account ID" at the top?

11 A. Yes.

12 Q. What is an account ID?

13 A. So, when a user establishes an account on AscendEX, what we
14 do is we assign that user a unique user identification number
15 that is associated with that user's account. That and the
16 email that the user provides are what we use to track all of
17 these transactions and kind of make sure that we're reflecting
18 all transactions into the appropriate accounts.

19 Q. What are just the last three digits of the user account for
20 this particular account?

21 A. Sure. 238.

22 MR. BURNETT: Let's scroll down a bit, Mr. Sears to
23 the section entitled, "User Information."

24 Q. What is in this section of the management portal?

25 A. Sure. So this shows a lot of key information that is

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1 associated with this particular unique user and user ID number.

2 Q. Do you see there's a section titled "email"?

3 A. Yes.

4 Q. It's a little incomprehensible, but let's focus on what's
5 after "at" sign of that email. What's there?

6 A. Opayq.com.

7 Q. How does this email section get populated on the management
8 portal?

9 A. This is the email that the user provided when they signed
10 up on our platform that then got associated with the user ID
11 number over in the right side of this document.

12 Q. Do you see there's a section called "nationality"?

13 A. Yes.

14 Q. Could you explain what that section grabs, what information
15 goes in there?

16 A. Sure. When a user first signs up on our platform,
17 depending upon -- sorry. Let me scratch that.

18 When a user initially signs up on our platform, if all
19 they are doing is providing an email or phone number, then
20 they're assigned what's called a KYC level of zero, which
21 limits their ability to do certain activities on our platform.
22 When they first sign up, what is captured in that nationality
23 field is the location of the ISP from which they say that they
24 are registering this account.

25 Q. So where does the ISP for this particular account come

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1 from?

2 A. Poland.

3 Q. Sorry. That phrase, ISP, what does that mean?

4 A. Excellent question. I honestly don't know what the
5 abbreviation stands for. It's like internet service something
6 or other. Basically, what it is, it is the unique server
7 located throughout the world from which you are logging onto a
8 computer system.

9 Q. We're not going to go through all the details here, just
10 want to look at one last thing in the second column where it
11 says, "account create time." Do you see that?

12 A. Yes.

13 Q. According to this, what date was this account created?

14 A. October 11, 2022.

15 Q. And do you see, it looks like a timestamp after that?

16 A. Correct.

17 Q. What time zone is that timestamp in?

18 A. That is recorded in UTC time, which is I think the time at
19 which the international dateline exists. It's roughly 5 hours
20 ahead of New York time.

21 Q. Now, is UTC time the sort of standard way that AscendEX
22 keeps track of time across all its documents?

23 A. It is.

24 Q. So we're going to take a look at a couple more documents
25 here starting with 1503 next.

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1 Do you recognize this document?

2 A. I do.

3 Q. What kind of information is in this document?

4 A. So, this information was all of the orders, whether buy or
5 sell, for the Mango USDT pair on a certain range of dates that
6 includes the account or user ID, their order ID, the status,
7 whether it was a buy or a sell, quantity, price, et cetera.

8 Q. Let's walk through a few parts of this. Starting with
9 column B, it's titled "account." What information is there?

10 A. That's the account of the user who placed that particular
11 order listed in either the user ID or the email that is
12 associated with that user ID when the user signed up for that
13 account.

14 Q. Do you recognize this email that's showing up in some of
15 the rows here?

16 A. Sure. That's the same one from the previous Government
17 Exhibit of the user information section that's affiliated with
18 the opayq.com user ID.

19 Q. Let's go over to column F. You see that says, "symbol"?

20 A. Yes.

21 Q. What does that mean?

22 A. As I said earlier, when we list cryptocurrencies, we list
23 the cryptocurrency against another reference asset, almost
24 always, one which is designed to maintain a fixed value of \$1.
25 This column represents the MNGO, which was the Mango

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1 cryptocurrency with the other reference pair being USDT, which
2 is commonly referred to as Tether, which is a stable coin that
3 is designed to maintain a one U.S. dollar fixed value.

4 Q. Finally, can we take a look at I, J, and K. What's in I,
5 J, and K?

6 A. Sure. So I and J represent the quantity and price at which
7 that order was filled, and then K represents the time and date,
8 again in UTC, at which that particular order was filled.

9 Q. So from this document, is it possible to tell all Mango
10 USDT trading activity on AscendEX for the dates and times that
11 are listed on the spreadsheet?

12 A. It is.

13 Q. Finally, if you could just go, there's a first tab here on
14 the spreadsheet. What type of information is in this tab?

15 A. Sure. So this was a report that reflected the volume of
16 trading in the Mango USDT pair on 15-minute intervals from June
17 1st of 2022 through December of 2022.

18 Q. I'd just like to look at one last data document, Government
19 Exhibit 1502. Start over on the first tab going to the green
20 arrow on the left.

21 What information is on this tab, just at a high level.

22 A. Sure. So this was the order activity, the buy and sell
23 orders that were placed by the account that is listed in column
24 B.

25 Q. And do you see that there are tabs after that, they're

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1 labeled October 2022 daily SOD snapshot in September and on?

2 A. Yes.

3 Q. What types of information are in those tabs?

4 A. I believe that those tabs were the daily transactions for
5 those periods of time.

6 Q. So from this document, can you derive the total prices and
7 quantities of Mango and USDT trading on AscendEX's order book
8 for each of these months?

9 A. Correct.

10 MR. BURNETT: Now, I know we wanted to pause at 12:00.
11 This is a natural break point or we can keep moving forward.

12 THE COURT: How much time do you have left?

13 MR. BURNETT: I'd say probably 10 minutes.

14 THE COURT: Let's keep going.

15 MR. BURNETT: Mr. Sears, if you could take this
16 document down.

17 Q. I want to shift away from the data now and focus your
18 attention on October of 2022. Was the Mango token available
19 for trading on the AscendEX platform back then?

20 A. It was.

21 Q. And what cryptocurrencies did it typically trade against?

22 A. It only traded against USDT or Tether.

23 Q. Did there come a time on October 11th, 2022 when you
24 learned anything about trading in the Mango token on AscendEX?

25 A. I did. I got a call that evening from a person who was in

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1 charge of our client services group.

2 Q. Let's set the stage a bit. Where were you?

3 A. I was at my home working on something, and online on my
4 work computer.

5 Q. Who, if anyone, reached out to you?

6 A. The head of our client services, who was located in New
7 York.

8 Q. What did that person flag for you?

9 MR. KLEIN: Objection.

10 THE COURT: Sustained.

11 Q. So, what did you do after that person reached out to you?

12 A. Sure. So, he had asked me specific questions about --

13 MR. KLEIN: Objection, your Honor.

14 THE COURT: Yes.

15 MR. BURNETT: Your Honor, may I approach?

16 THE COURT: You may.

17 (Continued on next page)

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1 (At the sidebar)

2 MR. BURNETT: Your Honor, we're not introducing this
3 for a hearsay purpose, it's to get him from point A to point B
4 on the narrative. What happens is he's going to testify that
5 someone told him that there was trading activity on an account
6 and they're putting a freeze on it, and then he's going to say
7 that he triggered them to take a number of investigative steps,
8 and then he reviewed data. It's going to exploit what he saw
9 in the data about the trading. I can't get him from point to A
10 to point B if he can't answer, I talked to someone that
11 triggered me to do something. This is classic non-hearsay.
12 You can't just can ask questions on a direct examination if you
13 don't have this kind of evidence.

14 THE COURT: What's the defendant's response?

15 MR. KLEIN: He can say as a result of that call, I
16 went and did this. He's going to sit up here and say what the
17 call was that's reiterating the hearsay.

18 THE COURT: He's saying it's not being put in for a
19 hearsay purpose, it's not for the truth of the matter of what
20 was conveyed to him. It's the fact of what was conveyed that
21 then triggered him to take certain steps. And so, he's not
22 putting it in for a hearsay purpose. You're right that it is a
23 statement from a declarant who was not here.

24 MR. KLEIN: It wasn't clear where he was going with
25 that. Initially, he did ask what he said.

O49Ceis3

Farrell - Direct

1 THE COURT: I think he tried to redirect and the
2 witness kind of gave the back story to connect the dots. And
3 so, I think it's fine. So you can proceed.

4 MR. BURNETT: Thank you.

5 (Continued on next page)

049Ceis3

Farrell - Direct

1 (In open court)

2 BY MR. BURNETT:

3 Q. Mr. Farrell, let's go back to the phone call you received.

4 What did that person tell you?

5 A. He told me that he had learned about unusual trading in the
6 Mango USDT pair and wanted to know what to do next.

7 Q. What did you direct him to do?

8 A. I told him to take certain steps to find out a little bit
9 more information about the trading, and if that information
10 indicated that the trading was unusual or atypical, then we
11 should take a certain type of remedial action against that
12 user's account.

13 Q. Did you, yourself, end up reviewing data about the trading
14 that had been flagged?

15 A. Yes.

16 Q. Can you describe what you saw in that trading data?

17 A. Sure. The volume in a very limited period of time was
18 atypical, which had driven the price of the cryptocurrency up
19 significantly and it was a significant deviation from the price
20 at which that same cryptocurrency was trading on other
21 exchanges that had more liquidity or more willing buyers and
22 sellers.

23 Q. Was your team able to identify the account that was
24 responsible for that trading?

25 A. Yes.

049Ceis3

Farrell - Direct

1 Q. Let's go back to Government Exhibit 1513. Which account
2 was responsible for the trading?

3 A. If you blow it up, I can give the user ID. It is the
4 account reflected on Government Exhibit 1513.

5 Q. What, if anything, did your team do with that account after
6 you identified this trading activity?

7 A. Sure. So Dimitriy was the head of client services who had
8 called me with that question. He instructed our development
9 team to freeze the account.

10 Q. So let's go to the section titled "Account Modifier
11 Records." What does that entry in account modify records
12 reflect?

13 A. Sure. So that reflects that one of the people in our
14 development team put a freeze on this account at 2:53:46, UTC
15 time, on October 12th, 2022. Then, in the note section, it
16 says, "per Dimitriy."

17 Q. Did there come a time when someone eventually claimed
18 ownership over this account?

19 A. Yes.

20 Q. About how long after the freeze went into effect?

21 A. Approximately one month later.

22 Q. Are you aware of who claimed ownership over it?

23 A. Yes.

24 Q. How?

25 A. Mr. Eisenberg commenced an arbitration against AscendEX

O49Ceis3

Farrell - Direct

1 over the fact that the assets in this account had been frozen.

2 MR. BURNETT: Thank you. No further questions, your
3 Honor.

4 THE COURT: This is an appropriate breaking spot for
5 our short midday break. I'll give you the full 30 minutes. So
6 we'll be back at let's say 12:45 p.m. I'll give you the same
7 instruction that I've given you now a couple times, which is
8 don't talk about the case with each other, don't try to look up
9 anything about the case, don't talk to anyone down here.
10 Otherwise, have a great, but brief lunch. We'll be back at
11 12:45.

12 (Continued on next page)

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O49Ceis3

Farrell - Direct

1 (Jury not present)

2 THE COURT: Mr. Farrell, you understand you'll be
3 coming back after the break and you'll still be under oath. So
4 you should not have any discussions with anyone about anything
5 having to do with this case, including the lawyers at the
6 government's table.

7 Do you understand that?

8 THE WITNESS: Understood.

9 THE COURT: So you can leave the stand right now.

10 THE WITNESS: Thank you.

11 (Witness not present)

12 THE COURT: Okay. Before we talk about the series 800
13 exhibits, anything else that the government wanted to raise?

14 MR. BURNETT: No, your Honor.

15 THE COURT: Anything from the defense side?

16 MR. KLEIN: No, your Honor.

17 THE COURT: In terms of exhibit 1512, Mr. Klein, I
18 understood when you said no objection subject to the prior
19 objection, that was referring to 1512?

20 MR. KLEIN: Yes, your Honor.

21 THE COURT: Does the defense request that I give a
22 limiting instruction to the jury when we come back from the
23 break?

24 MR. KLEIN: Yes, your Honor.

25 THE COURT: The instruction that I would give would

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Farrell - Direct

1 be, you were shown a document that made reference to the terms
2 "manipulation" and "fraud." You should not follow any
3 definition of these terms from that document. Instead, I will
4 provide you with the legal definitions of these terms. It is
5 those definitions and only those definitions that you should
6 follow in this case.

7 Any issue with that?

8 MR. KLEIN: Your Honor, do you mind if I look at it
9 during the break a little bit? I would say maybe, "those terms
10 and any other terms," because they did talk about a few other
11 aspects in 1413.

12 THE COURT: If you're tweaking it, take a look at it
13 over the break.

14 Let's talk about the series 800 exhibits.

15 Mr. Burnett, other than the use of those exhibits with
16 Mr. Jain and the Rule 703 issue that you raised, is there any
17 other basis for admission of Government Exhibits 885 through
18 899?

19 MR. BURNETT: I don't think so, your Honor.

20 THE COURT: Is there any other evidence that you have
21 that would suggest that there was a futures market for USDC at
22 or before the time of the offense?

23 MR. BURNETT: Other than those documents and the
24 testimony of this witness, no.

25 THE COURT: So given that, I am going to -- so here's

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Farrell - Direct

1 the deal. Under Rule 703, it would potentially be proper for
2 an expert to base his opinion on documents such as the press
3 release identified at Government Exhibit 897. It may also be
4 proper for an expert to opine on the nature of a product being
5 offered and how that investment product worked, as that would
6 be an opinion based on the expert's specialized knowledge.
7 However, a party cannot call an expert simply as a conduit for
8 introducing hearsay under the guise that the testifying expert
9 used the hearsay as the basis of his testimony. That's from
10 *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 136 (2d Cir.
11 2013).

12 The appropriate way to adduce factual details of
13 specific past events is, where possible, through persons who
14 witness those events. That's the same case. As such, the
15 government cannot use an expert to introduce that the product
16 was available on a particular date. For the date of the
17 product's availability, the expert would not be applying any
18 expert knowledge, but would just be a conduit for introducing
19 hearsay. So there would need to be separate evidence in the
20 record that would establish that the particular instrument as
21 to which the expert might opine as to their operation were in
22 fact in the market and traded at or before the time of the
23 offense. As we've just discussed, there is no such evidence.

24 So, Mr. Jain should not be testifying as to when any
25 particular instruments were transacted that may have been

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Farrell - Direct

1 reflected in any of the documents in GX 885 through 899, and
2 those documents are excluded.

3 The question that remains is whether there's any
4 remaining basis for the government to claim that USDC is an
5 actionable commodity in this case, and the Court does not see
6 any other basis.

7 There are two potential arguments that the government
8 could make. One is that in 7 U.S.C. 1a(9), the use of "in the
9 future dealt" could refer to time periods after the offense in
10 question happened. The Court does not believe that that's a
11 plausible interpretation of the statute applied, especially in
12 the criminal context. Whether a thing is a commodity I think
13 fairly and properly under the statute depends on the time of
14 the offense or some time before the offense occurred, and not
15 at some hypothetical time period in the future, even sitting
16 here today, which would draw into the statute's ambit any
17 number of different items. Anything could be a commodity
18 because if someone could just imagine in their mind that,
19 hypothetically, in the future, it could be traded in a futures
20 market.

21 The second argument that the government has made is
22 that the definition of "commodity" operates at the categorical
23 level. The government has pointed to various parts of the
24 statute where things like corn, natural gas is referenced in
25 one of the cases cited by the government or other items are

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Farrell - Direct

1 arguably defined at the categorical level.

2 Just taking that piece of the argument, even defining
3 what the category is is not very clear and would not be a
4 straightforward exercise. To give one example, one of the
5 commodities that is laid out in the statute is frozen
6 concentrated orange juice. So that's a very narrow and
7 specific category. Why not orange juice? Why not fruit juice?
8 Why not oranges or fruits? There's really not any guidance how
9 the categories would be applied in this context.

10 Ultimately, the Court doesn't need to take that step
11 because the statute says for anything that Congress did not
12 actually lay out in the statute would fall into the definition.
13 At that level, the definition of commodity turns on a very
14 simple inquiry, which is whether the thing at issue is a
15 service or interest in which contracts for future delivery are
16 presently or in the future dealt with. That is a clear signal
17 that the inquiry is at the level of the particular thing that
18 is being called a commodity and not at some categorical level.
19 That is a fair and proper interpretation of the statute as it
20 reads, but certainly as applied in the criminal context, the
21 Court believes the rule of lenity would demand, to the extent
22 there was an ambiguity, would resolve that ambiguity in the
23 defendant's favor.

24 And so, for those reasons, unless the government has
25 another basis to define or have USDC treated as a commodity,

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Farrell - Direct

1 the Court would preclude any evidence or argument along those
2 lines.

3 Just to clarify, the evidence relating to the
4 transactions would seem to be relevant whether or not the USDC
5 is a commodity argument is in the case or not because the USDC
6 sales for MNGO are related to the ultimate conduct with respect
7 to the MNGO perpetuals that are at issue in this case. So it's
8 not really a question of whether any evidence that would be
9 properly admissible is in the case or not. Really, it's a
10 question of whether the contention and argument that USDC is a
11 commodity, and thus that, under the statutory provisions that
12 we've discussed, there's a contract of sale of a commodity in
13 interstate commerce that would be relevant for purposes of a
14 separate basis for liability should remain in or not.

15 I'll stop there.

16 Mr. Burnett, any further issues to discuss?

17 MR. BURNETT: No, your Honor. Just on the lenity
18 point. I think an important contextual piece here on the
19 categorical approach is the fact that there is like an
20 implementing agency for this particular rule -- for this
21 particular statute, the CFTC, and that entity has spoken
22 repeatedly on applying a categorical approach and how that
23 should apply in the context of cryptocurrencies.

24 So I think to the extent there might be a lenity issue
25 where there's silence from the agency, the fact that they have

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Farrell - Direct

1 filled in here with counsel in favor of deferring to the
2 approach that the agency has taken on this question.

3 THE COURT: To be clear, I think it's a proper
4 interpretation of the statute, that the analysis does not
5 proceed on a categorical level, so I referenced the rule of
6 lenity in the alternative.

7 Let me ask you a question, because there was a
8 reference to a website that then provided the definition --
9 referenced another regulation that used the virtual currency
10 term. And so, just so I understand the regulatory context, is
11 there an actual regulation that says for purposes of defining
12 what is a commodity under 7 U.S.C. 1a(9), virtual currencies
13 count as a commodity.

14 MR. BURNETT: My understanding the way the CFTC has
15 gone through this is by regulating through -- in the first
16 instance went through it by regulating through CFTC enforcement
17 actions. So it's the enforcement method by which they're
18 regulating, not the formal rule making method. And so, there's
19 a decision that the agency made that laid down that rule, and
20 then that was referenced in subsequent rule making, which is
21 what I think you were referring to, that the parties cited with
22 respect to the actual delivery exception.

23 THE COURT: There's no regulation that says commodity,
24 as defined in the statute, include virtual currencies defined
25 in the way that you pointed out in the regulation at issue.

O49Ceis3

Farrell - Direct

1 MR. BURNETT: I think there is in two respects.
2 First, the actual delivery regulation is a regulation that does
3 say that, it's primarily addressing a different topic, but it
4 does say that in the regulation.

5 And second, I guess this sort of like a -- I don't
6 know how you think about legislation regulation points, but the
7 agency can do regulation through enforcement. So the fact
8 they've made an enforcement -- the commission itself has issued
9 an enforcement opinion saying we think this is a commodity is
10 regulation.

11 THE COURT: But you would agree that 17 C.F.R. 180.1,
12 as well as the statutory provision on Count Two, both of those,
13 when they use the term "commodity," are referring to the
14 statutory definition that we've been talking about; right?

15 MR. BURNETT: Yes.

16 THE COURT: Understood.

17 Anything further from your side?

18 MR. BURNETT: No, your Honor. I think we'll have
19 to -- this will probably just affect kind of -- like the
20 flowchart we have going at this point for Count One, but we can
21 update that.

22 THE COURT: Understood.

23 Anything from the defense?

24 MR. KLEIN: Your Honor, I didn't write down fast
25 enough your proposed instruction. I apologize.

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Farrell - Direct

1 THE COURT: Sorry. I didn't hear that.

2 MR. KLEIN: Never mind, your Honor.

3 THE COURT: Nothing further? Okay. So we'll be back

4 at 12:45.

5 (Luncheon recess)

6 (Continued on next page)

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049Ceis3

Farrell - Direct

1 AFTERNOON SESSION

2 12:57 p.m.

3 (In open court; jury not present)

4 THE COURT: I understand there was an issue the
5 parties wanted to address?

6 MR. BURNETT: Yes, your Honor. We have what I think
7 is an agreed upon set of small edits to the limiting
8 instruction.

9 THE COURT: Do you have it in writing?

10 MR. BURNETT: I have it in chicken scratch. If I read
11 it, though, is there a way you have a version of it that you
12 can follow along with our proposal?

13 THE COURT: Yes.

14 MR. BURNETT: So, it would change to: You were shown
15 a document, GX 1512, that made reference to terms like
16 manipulation and fraud. Then we would propose cutting the
17 second sentence and replacing it with, that document and its
18 terms were not offered to define the relevant law in this case.
19 Instead, and then just finishes what your instruction was.

20 THE COURT: And so, just in terms of order of
21 operations, jury's going to come back, give the limiting
22 instruction, then bring Mr. Farrell back?

23 MR. BURNETT: That's fine with us.

24 MR. KLEIN: Your Honor, sorry, just one suggestion. I
25 didn't talk to the government about it, I apologize, but that

O49Ceis3

Farrell - Direct

1 document and the testimony about it, because he actually did
2 testify about it, he hadn't read into it, it was just entered.

3 THE COURT: All he did was read in the terms. I don't
4 believe he offered any testimony other than simply reading
5 literally the words in the document. So it might be a little
6 confusing to suggest that he had offered some testimony,
7 because as I understand it, it's the document and its terms,
8 which is what his testimony was. I don't want to suggest to
9 the jury that there had been some testimony that he vouched for
10 something that was in the contract when he actually did not
11 vouch for anything. He just literally read the terms of it.
12 If you want me to modify it, it might do more violence than --

13 MR. KLEIN: You're right, your Honor. I don't, no.

14 THE COURT: Let's bring the jury back in.

15 (Continued on next page)

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O49VEIS4

Farrell - Cross

1 (Jury present)

2 THE COURT: All right. Please be seated.

3 Welcome back. And to the folks on the top row, I
4 didn't want you to -- I know there's a big wall right there, so
5 I wanted to make sure that you were able to see without hurting
6 your necks.

7 Before we get started again, during the testimony you
8 were shown a document, Government's Exhibit 1512, that made
9 reference to terms like "manipulation" and "fraud." That
10 document and its terms were not offered to define the relevant
11 law in this case. Instead, I will provide you with the legal
12 definitions of these terms. And it is those definitions -- and
13 only those definitions -- that you should follow in this case.
14 Okay?

15 All right. Can we get Mr. Farrell back.

16 Welcome back, Mr. Farrell.

17 THE WITNESS: Thank you, Judge.

18 THE COURT: You understand you're still under oath?

19 THE WITNESS: Yes, I do.

20 THE COURT: All right. Mr. Klein, you may proceed.

21 MR. KLEIN: Yes. Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. KLEIN:

24 Q. Mr. Farrell, I want to talk to you about Government Exhibit
25 1512, the terms of service.

O49VEIS4

Farrell - Cross

1 MR. KLEIN: Those are already admitted, your Honor. I
2 want to put those on the screen.

3 THE COURT: You may.

4 Q. I want to talk to you about these terms of service for a
5 moment. I'm going to direct your attention to the very top of
6 the terms of service, the first couple sentences.

7 Mr. Farrell, do you see those first couple lines?

8 A. I do.

9 Q. Okay. These terms disclose that the digital assets are
10 high-risk assets, doesn't it?

11 A. That's what it says; correct.

12 Q. And that the digital asset market is new and unproven;
13 correct?

14 A. Correct. That's what it says.

15 Q. You helped draft these terms?

16 A. Not this version, no.

17 Q. But you are involved in the terms of service at your
18 company?

19 A. Yes, I am.

20 Q. And it also says that there may be frequent price
21 volatility; correct?

22 A. Correct. That's what it says.

23 Q. Now, these terms also describe AscendEX as a Romanian
24 company; is that correct?

25 A. That's correct.

O49VEIS4

Farrell - Cross

1 Q. AscendEX is a Romanian company; correct?

2 A. AscendEX Technology S.R.L., the owner and operator of the
3 exchange, correct, yes, it is.

4 Q. So the exchange is a Romanian company; correct?

5 A. Again, the company that owns and operates the exchange is a
6 Romanian company, yes.

7 Q. Okay. So let me talk to you a little bit about that.

8 Was it originally a Singaporean company?

9 A. The parent company was always a Singapore company when the
10 exchange was founded in 2018. In 2021, the Singapore parent
11 company transferred the operations and ownership of the
12 exchange and platform to a newly created Romanian company,
13 AscendEX Technology S.R.L.

14 Q. So customers are customers of the Romanian company?

15 A. Correct.

16 Q. Okay. And people who engage with the exchange, they use
17 the website?

18 A. Correct. That's one way.

19 Q. What are some other ways?

20 A. The mobile app.

21 Q. So there's a mobile app and the website; correct?

22 A. Correct.

23 Q. Okay. And on those it's listed as a Romanian company;
24 correct?

25 A. I do not know of anything on the app; but again, they both

O49VEIS4

Farrell - Cross

1 link to the same terms of service.

2 Q. Now I'm focused not on the terms of service, sorry.

3 A. Sure.

4 Q. You're familiar with the website and the app?

5 A. Generally speaking, yes.

6 Q. They don't list the U.S. location, do they?

7 A. Not that I'm aware of.

8 Q. They don't disclose a New York office, do they?

9 A. No, but the AscendEX S.R.L. does not have a New York
10 office.

11 Q. So AscendEX, okay, doesn't have a U.S. office. And what
12 company do you work for?

13 A. HD Consulting Service LLC.

14 Q. And that's the company with the New York office?

15 A. Correct.

16 Q. And you talked with the prosecutors about a bunch of
17 functions that happened in the New York office; correct?

18 A. Correct.

19 Q. Those are not disclosed on the website or on the app, are
20 they? Like, you don't disclose compliance is reviewed in New
21 York or the wallets are stored in New York, right?

22 A. For compliance, that's correct. I do not know what we
23 might have on the website regarding wallet locations.

24 Q. You're not aware of it saying there are wallets in New
25 York, are you?

O49VEIS4

Farrell - Cross

1 A. I'm not aware, but I also don't know what's on every screen
2 of the website.

3 Q. Okay. I'm talking about the Romanian company AscendEX.
4 What's its actual name?

5 A. Sure. It's AscendEX Technology S.R.L.

6 Q. So do you work for that company?

7 A. I perform services for that company pursuant to a services
8 agreement between AscendEX S.R.L. and HD Consulting, as well as
9 board resolutions by S.R.L. and powers-of-attorney by S.R.L.

10 Q. And the other people in the U.S. work for HD Consulting;
11 correct?

12 A. It depends on the person. So we -- everyone in New York is
13 an employee of HD Consulting. Some of the people within HD
14 Consulting have similar things, as I do, in terms of board
15 resolutions, authorizing them to do certain specific activities
16 on behalf of S.R.L., or powers-of-attorney granting them
17 additional authority to act on behalf of S.R.L.

18 Q. But AscendEX is a Romanian company?

19 A. S.R.L., correct.

20 Q. In connection with this case, AscendEX, the Romanian
21 company, produced documents; correct?

22 A. That is correct.

23 Q. And that was in response to a government subpoena?

24 A. Correct.

25 Q. And because it's a Romanian company, did the government

O49VEIS4

Farrell - Cross

1 have to use a treaty process or anything?

2 A. They did not, no.

3 Q. And you were the person who actually were the custodian of
4 records; correct?

5 A. Correct.

6 Q. And you filled out a custodian of records form; correct?

7 A. Correct.

8 Q. And on that form you listed yourself as the general counsel
9 of AscendEX Technology S.R.L. a Bucharest Romanian company;
10 correct?

11 A. That's correct.

12 Q. Let me go back to the terms of service for a moment.

13 All right. So these are on the company's website and
14 app?

15 A. Correct.

16 Q. And the company doesn't -- how many pages are the terms of
17 service?

18 A. You can tell from the exhibit. I don't know offhand
19 because, again, when things are on a website, they are
20 basically more of a scrolling as opposed to page break, page
21 break, page break.

22 Q. Well, I'll tell you, these are about eight pages. Sound
23 about right?

24 A. Sure.

25 Q. This is small font, isn't it? Can you read that on your

O49VEIS4

Farrell - Cross

1 screen?

2 A. If I get a lot closer, yes.

3 Q. I have to get my reading glasses.

4 But it's small font; correct?

5 A. Correct.

6 Q. And it's eight pages long.

7 How long do you think it would take someone to read
8 these terms?

9 A. If they read them the way --

10 Q. I'm asking how long it takes them to read the entire terms.

11 A. Fifteen, 20 minutes.

12 Q. Okay. Do you monitor how long people look at the terms?

13 A. I do not personally, no.

14 Q. Does AscendEX?

15 A. I am not aware of whether we do or don't.

16 Q. You don't even keep track if people read these, do you?

17 A. Well, the way that we keep track --

18 Q. No, I'm not asking that question.

19 You keep track of people reading this?

20 A. Somewhat, yes.

21 Q. That's not an answer.

22 Do you keep track of people reading -- that people
23 read these?

24 MR. BURNETT: Asked and answered a number of times.

25 THE COURT: It's overruled.

O49VEIS4

Farrell - Cross

1 A. Okay. Me personally, no.

2 Q. Does AscendEX keep track of people -- that people read
3 these?

4 A. What AscendEX keeps track of is that the users verify that
5 they did.

6 Q. That's not my question.

7 Is it tracking people actually read these?

8 A. I'm not aware whether we do or do not.

9 Q. I'm going to turn now for a moment to the arbitration we
10 talked about.

11 A. Sure.

12 Q. You recall discussing that with the prosecutor?

13 A. Yes.

14 Q. All right. You learned about an arbitration my client had
15 filed against AscendEX?

16 A. Correct.

17 Q. That was in November 2022?

18 A. Sounds about right, yes.

19 Q. Would it help refresh your memory if I showed you his first
20 email to AscendEX?

21 MR. BURNETT: Objection.

22 THE COURT: It's overruled.

23 A. Sure.

24 MR. KLEIN: I'd ask that Mr. Smith, if you could pull
25 up GX-601.

O49VEIS4

Farrell - Cross

1 Q. Mr. Farrell, I'm going to ask you to look on your screen.

2 A. Sure.

3 MR. KLEIN: This is not being shown to the jury, your
4 Honor. It's just to refresh his memory.

5 THE COURT: Understood.

6 Q. Would you please take a moment to read that email.

7 A. Sure.

8 Q. Does that refresh your memory that my client reached out to
9 AscendEX in early November 2022?

10 MR. BURNETT: Objection. It's a different question.

11 THE COURT: That's overruled.

12 A. No, because I've never seen this before.

13 Q. You do remember that my client reached out to AscendEX in
14 early November to bring an arbitration against AscendEX;
15 correct?

16 A. Correct.

17 Q. And he used his name, Avraham Eisenberg or Avi Eisenberg?

18 A. He did, on the arbitration filing, which was how I became
19 aware that an arbitration was filed against us.

20 Q. Okay. And that filing is --

21 MR. KLEIN: I'm not offering this in evidence, your
22 Honor.

23 Q. So that's an arbitration filing with an arbitrator in
24 Singapore, right?

25 A. That is correct.

O49VEIS4

Farrell - Cross

1 Q. And that's because your terms of service have a Singapore
2 arbitration provision; correct?

3 A. Correct.

4 Q. And on the arbitration, my client identified himself by his
5 name?

6 MR. BURNETT: Objection.

7 THE COURT: This document doesn't need to be on the
8 screen unless you're trying to refresh the witness's
9 recollection. So let's take it down from the screen. You can
10 ask your questions.

11 Q. Do you recall that he identified himself by his name on the
12 arbitration filing?

13 A. Correct. He filed the petition, his name.

14 Q. You recall that he gave an email address?

15 A. Yes, I do.

16 Q. Do you recall that he gave a U.S. telephone number?

17 A. No, I actually don't.

18 Q. Would it refresh your memory if you reviewed the
19 arbitration filing?

20 A. Sure.

21 MR. KLEIN: Your Honor, may I show him that?

22 THE COURT: Yes.

23 A. Okay.

24 Q. Does that refresh your memory they provided a U.S.
25 telephone number?

O49VEIS4

Farrell - Cross

1 A. Sure. There's a U.S. telephone number on the petition.

2 Q. And do you recall the email address he gave?

3 A. I do not off the top of my head. I know it was something
4 like thimessolution@gmail or something like that.

5 Q. Would it refresh your memory of the email address if I
6 showed you the arbitration?

7 A. Yes. It's avi@thimessolutions.com.

8 Q. And he also provided an address in Israel?

9 A. Correct.

10 Q. So you had his name, his telephone number, address
11 submitted in Israel, and an email address for him; correct?

12 A. Correct.

13 Q. And this was a voluntary filing he filed against AscendEX.
14 You didn't sue him; correct?

15 A. Correct. He filed the arbitration petition.

16 Q. And he was seeking the funds that were held in that account
17 that the prosecutor was talking about, wasn't he?

18 A. Correct. He was seeking the funds that we had frozen.

19 Q. One last set of questions.

20 You talked about freezing the account. Do you
21 remember that?

22 A. Yes, sir.

23 Q. That was an account that had traded on AscendEX, right?

24 A. Correct.

25 Q. An account that was used to buy the Mango token with USDC;

O49VEIS4

Farrell - Redirect

1 correct?

2 A. Correct. I think he sold some, too.

3 Q. That was a spot market trade?

4 A. They were all spot market trades, yes.

5 Q. And you -- on a spot market, you can make or lose money;
6 correct?

7 A. Correct.

8 MR. KLEIN: Nothing further.

9 THE COURT: All right. Redirect, Mr. Burnett.

10 MR. BURNETT: Yeah, just a little bit. Thanks.

11 REDIRECT EXAMINATION

12 BY MR. BURNETT:

13 Q. Mr. Farrell, do you recall that you were asked a few
14 questions about the Romanian entity is the parent to some of
15 the AscendEX companies?

16 A. Yes.

17 Q. How many people who actually run AscendEX work in Romania?

18 A. There is only one person who is listed as an officer of the
19 Romanian entity.

20 Q. And back in '22, how many people were running AscendEX from
21 the New York office?

22 A. In 2022, approximately 75 to 80.

23 Q. Do you recall you were asked a number of questions about
24 whether there were notices about where AscendEX was located on
25 the website?

O49VEIS4

Farrell - Redirect

1 A. Yes.

2 MR. BURNETT: At this time, your Honor, the government
3 would like to display just for the parties and the Court and
4 the witness a stipulation which is Government Exhibit 1702.

5 THE COURT: Okay.

6 MR. BURNETT: This is a stipulation between the
7 parties regarding a number of documents. Part of the
8 stipulation includes that 1702 may be admitted as evidence. So
9 the government would offer 1702 right now.

10 THE COURT: Any objections?

11 MR. KLEIN: No.

12 THE COURT: All right. It will be admitted.

13 (Government's Exhibit 1702 received in evidence)

14 MR. BURNETT: And if you could publish -- actually, we
15 don't even need to publish it for the jury.

16 One of the messages or the subparts here says:
17 Government Exhibits 600 through 613, including their subparts,
18 are true and correct copies of records produced by Google LLC
19 for the Google account 613ike@gmail.com. And I'd like to offer
20 Government Exhibits 606 and 607.

21 THE COURT: Those will be admitted.

22 (Government's Exhibits 606, 607 received in evidence)

23 MR. BURNETT: All right. Mr. Farrell, could you --
24 sorry. Mr. Sears, could you please pull up Government
25 Exhibit -- actually, starting off with Government Exhibit 1613,

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Farrell - Redirect

1 please, which is already in evidence. And just for the -- if
2 you could zoom in on the user information section again.

3 BY MR. BURNETT:

4 Q. And just to refresh everyone, what's the end of this email
5 address here?

6 A. Opayq.com.

7 Q. And what's just the first three letters of that string of
8 letters?

9 A. Jq6.

10 Q. All right.

11 MR. BURNETT: Now, Mr. Sears, if you could pull up
12 Government Exhibit 606.

13 Q. What do you see in the "from" line here? Just the first
14 word.

15 A. Sure. The from is AscendEX.

16 Q. And then what's the "to" line?

17 A. The jq6@opayq.com email that we just saw in the user
18 document earlier.

19 Q. And do you see that -- what's the subject line of the
20 email?

21 A. The subject line is "AscendEX Deposit Confirmation."

22 MR. BURNETT: And Mr. Sears, if you could just blow up
23 the bottom two lines where it says copyright, and there's an
24 address.

25 Q. What city is that address in?

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Farrell - Recross

1 A. New York City, New York.

2 MR. BURNETT: And let's turn to Government Exhibit
3 607.

4 Q. Who is this email from and who's it to?

5 A. So it's from indirectly the -- sorry. It's from AscendEX
6 to the jq6@opaq.com email address.

7 Q. What's the subject line?

8 A. "AscendEX, please verify your email."

9 Q. Do you see an address on the bottom there as well?

10 A. Correct.

11 Q. Where is that address?

12 A. That's a New York City, New York address.

13 MR. BURNETT: Thank you.

14 No further questions, your Honor.

15 THE COURT: All right. Any recross?

16 MR. KLEIN: Just very quickly, for the same exhibits.

17 RECROSS EXAMINATION

18 BY MR. KLEIN:

19 Q. You didn't send those emails, did you?

20 A. No, I did not. That was our support team.

21 Q. You didn't know if anyone actually read those emails, do
22 you?

23 A. No I do not.

24 Q. You know nothing about those emails other than just looking
25 at them now; correct?

O49VEIS4

Jain - Direct

1 A. Correct.

2 MR. KLEIN: Nothing further.

3 THE COURT: All right.

4 Thank you very much, Mr. Farrell.

5 THE WITNESS: No problem. Thank you, your Honor.

6 (Witness excused)

7 THE COURT: The government may call its next witness.

8 MR. BURNETT: The government calls Kapil Jain.

9 KAPIL JAIN,

10 called as a witness by the Government,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BURNETT:

14 Q. All right. Good afternoon, Mr. Jain.

15 A. Good afternoon.

16 Q. What's your work background in?

17 A. Sure. So my work background is I was a hedge fund manager

18 for many years. And I traded futures, currencies, and other

19 complex financial instruments. I taught at Stanford

20 University. I taught a graduate program, master's and Ph.D.

21 students, in futures, derivatives, and complex quantitative

22 trading strategies. Thirdly, I was a blockchain researcher and

23 ran a blockchain start-up and research group. And fourthly, I

24 am a consulting expert in matters such as these proceedings.

25 Q. How did you get involved in this case?

O49VEIS4

Jain - Direct

1 A. I was asked to participate based on my consulting expertise
2 and expert testimony expertise.

3 Q. What are you here to testify about?

4 A. I'm here to talk about blockchains, futures, perpetuals,
5 and how these markets work, in an effort to help the Court and
6 the jury understand these products.

7 Q. All right. So we'll get to that substance in a little bit,
8 but first I want to start with your background.

9 Where did you go to college?

10 A. I did my undergraduate college at Dartmouth College in
11 Hanover, New Hampshire.

12 Q. What did you major in there?

13 A. I majored in math and engineering.

14 Q. Have you received any graduate degrees?

15 A. I have.

16 Q. What and from where?

17 A. I received a graduate degree from Stanford University in
18 financial mathematics.

19 Q. What did that program involve?

20 A. That program involved advanced graduate work and research
21 in applied math as is relevant to financial markets,
22 derivatives, futures, and other complex markets.

23 Q. Let's shift gears now from your education to your work
24 experience. You mentioned that you spent time in the hedge
25 fund world; is that right?

O49VEIS4

Jain - Direct

1 A. That's right.

2 Q. What was your first finance job?

3 A. My first finance job was with a quantitative hedge fund
4 called D.E. Shaw & Company, which managed trading strategies on
5 behalf of sophisticated investors.

6 Q. What kind of things did you do there?

7 A. So I created computer models and did research on financial
8 markets, and I traded instruments such as derivatives, futures,
9 and options.

10 Q. You've used the word "derivatives" a couple times. What is
11 a derivative?

12 A. Sure. So a derivative is a type of financial product that
13 derives its value from another asset. So a simple example
14 might be a stock could be a financial asset. A derivative
15 might be an option on that stock or a futures on that stock.
16 And derivatives in particular have quantitative modeling
17 aspects and attributes to them.

18 Q. What did you do after D.E. Shaw?

19 A. After D.E. Shaw, I worked at Perry Capital, which was
20 another very large hedge fund that managed sophisticated
21 institutional investor money.

22 Q. What was your role there?

23 A. It was a similar role. I managed portfolios of derivatives
24 and other complex financial instruments and strategies.

25 Q. And finally, what did you do after Perry Capital?

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Jain - Direct

1 A. I was a member of Citigroup, and I ran a group called Citi
2 Principle Strategies, which was an internal hedge fund of
3 Citigroup. And again, I ran similar types of strategies on
4 futures and derivatives.

5 Q. At Citi, how much money approximately were you responsible
6 for managing?

7 A. More than a billion dollars.

8 Q. And how many people did you oversee?

9 A. More than three dozen traders.

10 Q. Did you stay in sort of the traditional finance industry
11 after Citi?

12 A. After Citigroup, that's when I decided to go back to
13 academia, and I took a position at Stanford on the faculty.

14 Q. Why switch into academia?

15 A. Well, a couple of reasons.

16 Number one, I had been blessed with a financial career
17 in Wall Street, and I wanted to give back and help train and
18 teach the future generations that were interested in learning
19 about these topics.

20 And number two, I wanted to be involved in research
21 and the cutting edge of research that was coming out of
22 academia. And that research included things like AI and
23 blockchain.

24 Q. What program did you run when you were at Stanford?

25 A. Sure. The program was called The Mathematical and

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Jain - Direct

1 Computational Finance Program.

2 Q. What kind of courses and topics did that program cover?

3 A. Sure. So that program taught graduate level -- so master's
4 students and Ph.D. students -- that were engineering,
5 engineering students. And the topics range from -- well,
6 courses that I taught included a course called Hedge Fund
7 Management; I taught a class called Statistical Arbitrage,
8 which is a very particular type of trading strategy; I taught a
9 class called Computational and Financial Mathematics; I taught
10 another class called Artificial Intelligence in Financial
11 Technologies. And that was a project class that also included
12 a heavy amount of blockchain course work.

13 Q. Now, about how long were you at Stanford for?

14 A. Four years.

15 Q. Where did you go after that?

16 A. After that, one of my research projects at Stanford was
17 looking at innovative new ways to create better blockchains.
18 And so I left Stanford to create a start-up to try and
19 commercialize one of the ideas our research team had about
20 blockchains.

21 Q. Just give a little bit of a summary of what that start-up
22 did.

23 A. Sure. It was called nCent Labs. And it was actually a
24 pretty simple premise. If you look at, for example, the
25 internet, the internet ended up having huge tech companies:

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Jain - Direct

1 Facebook, Google, and whatnot. And they've grown considerably
2 large in their value. But if you think about it, all of the
3 users of these products contribute the value that causes them
4 to grow.

5 And so our project was to try to think of a better way
6 to create a computer network where the users control their own
7 value to a greater degree rather than just giving up that value
8 to large companies.

9 Q. Now, in addition to the academic and private sector work
10 that you've talked about, have you done advisory work before?

11 A. I have.

12 Q. What types of advisory work?

13 A. Well, I would say there's two main categories of advisory
14 work. One is what I would call pure consulting work, which I
15 advise organizations such as Freddie Mae and Freddie Mac, which
16 are in the U.S. the two large housing finance authorities,
17 including the FHFA, which is the regulatory authority that
18 regulates them.

19 I've advised the Fed, both the New York, as well as
20 the San Francisco Federal Reserve Bank.

21 I've advised IMF World Bank, and other large entities
22 that were government entities.

23 I've also advised large tech companies: Microsoft,
24 Nvidia and others.

25 And the third category of my consulting work has been

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Jain - Direct

1 with young start-ups. Maybe you might not have heard of the
2 names of them, but some of my former students started up
3 companies and other folks with start-up companies, and I like
4 to help them out.

5 Q. Have you ever worked on litigation before in connection
6 with your consulting practice?

7 A. I have. So separate from my -- what I call pure
8 consulting, I also do expert witness work. And in that expert
9 witness work, I've advised, again, government organizations, so
10 the Securities and Exchange Commission, which is a U.S.
11 regulator; the CFTC, the Commodities and Futures Trading
12 Commission, which is another regulator in the U.S.; the DOJ,
13 such as in this matter; the FTC, the Federal Trade Commission;
14 and other government organizations, in addition to private-side
15 client work. And this would be large Fortune 100 companies, as
16 well as other private entities, like blockchain companies and
17 hedge funds.

18 Q. Broadly speaking, what types of cases have you gotten
19 involved in?

20 A. Sure. So I like to get involved in cases where I think my
21 background and my experience can be helpful in explaining
22 complex financial concepts so that people can make better
23 decisions.

24 MR. BURNETT: At this time the government moves to
25 qualify Mr. Jain as an expert.

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Jain - Direct

1 THE COURT: Any objection?

2 MR. KLEIN: No.

3 THE COURT: Okay.

4 He'll be qualified under Rule 702. You may proceed.

5 MR. BURNETT: Thank you, your Honor.

6 BY MR. BURNETT:

7 Q. So before we move further ahead in your testimony, I just
8 want to ask a few preliminary questions about your role and
9 involvement in this case.

10 To your knowledge, have you met any of the witnesses?

11 A. I have not.

12 Q. Have you met the defendant?

13 A. I have not.

14 Q. Have you reviewed a full set of evidence about all of the
15 allegations that are at issue here?

16 A. So I have not reviewed a full set of information about the
17 allegations.

18 Q. Why not?

19 A. It was not part of my mandate or my role to be asked that.

20 Q. Did anyone help in your preparation for this case?

21 A. I did receive help.

22 Q. From who?

23 A. I received help from consultants at the Battle Group, which
24 is an economic consulting firm which assists me in my expert
25 witness reports and testimony.

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Jain - Direct

1 Q. Are you personally compensated for the work that the Battle
2 Group folks do?

3 A. I am not.

4 Q. Are you being compensated for your own time on this case?

5 A. I am.

6 Q. At what rate?

7 A. My government rate is 995 per hour.

8 Q. Does the amount that you get paid depend in any way on the
9 opinion that you offer here?

10 A. It does not.

11 Q. And does the amount that you get paid depend in any way on
12 the outcome of the trial?

13 A. It does not.

14 Q. Now, before we move ahead, have you previously reviewed
15 what was marked as Government Demonstratives 1800 to 1829?

16 A. I have.

17 Q. Will those help you present your testimony to the jury?

18 A. They will.

19 MR. BURNETT: So at this time, the government just
20 asks permission to be able to use 1800 to 1829 as
21 demonstratives, but not as exhibits.

22 THE COURT: Any objection?

23 MR. KLEIN: Your Honor, one second.

24 May I just talk to the prosecutor?

25 THE COURT: Yes.

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Jain - Direct

1 (Counsel conferred)

2 MR. KLEIN: No objection, your Honor.

3 THE COURT: All right. You may proceed.

4 MR. BURNETT: All right. So let's move ahead and
5 start with pull up government demonstrative 1800.

6 BY MR. BURNETT:

7 Q. All right. So let's start out with basic concepts and
8 terminology.

9 Are you familiar with something called a blockchain?

10 A. I am.

11 Q. What's a blockchain?

12 A. So a blockchain is a type of computer network. And it's
13 characterized by an aim to be a decentralized type of design of
14 a computer network.

15 So in contrast, for example, you think of the
16 internet. We talked about the internet having centralized
17 companies – such as Microsoft or Amazon – serving web pages to
18 individuals. Well, a blockchain is an aim to create a
19 different kind of computer network where it's more
20 decentralized and the users are more involved in the operation
21 of the network.

22 Q. Is there more than one type of blockchain?

23 A. There are.

24 Q. What are some names of prominent blockchains that are out
25 there?

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Jain - Direct

1 A. Sure. So the most -- perhaps the most prominent blockchain
2 is Bitcoin. And there are other blockchains that have
3 subsequently gained in popularity, including Ethereum, Solana.
4 And there's really many, many thousands of blockchains.

5 Q. How do people interact with and do things on a blockchain?

6 A. Well, blockchains are a special type of design of a
7 computer network that are transactional in nature. So in
8 general, one transacts with a blockchain with a type of
9 transaction. And that's the primary way to interact with a
10 blockchain.

11 Q. Are there ways for people to see those transactions that
12 happen on the blockchain?

13 A. There are. In fact, one of the unique properties of a
14 blockchain is that the entire transaction history, not just of
15 the transactions that individual person does with the network,
16 but all the transactions in the network are, in general,
17 publicly available.

18 Q. What are some tools that people can use to see transactions
19 on a blockchain?

20 A. Sure. So the market has come up with tools and simple ways
21 for individuals to visualize all the transactions on a
22 blockchain. For example, Ethereum has a website called
23 Etherscape, that one can go on a website and observe different
24 transactions on a blockchain. But there's many visualization
25 tools that are out there. And in fact, individuals, if you're

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1 an expert user, you may be able to even download those
2 transactions to your computer and visualize them using Excel or
3 if you're able to write computer code, using a computer program
4 to be able to visualize them.

5 Q. Now, when you say that transactions are recorded and
6 publicly viewable on the blockchain, does that mean things like
7 people's names, their addresses, their phone numbers are
8 available for anyone to see?

9 A. Right. So blockchains typically have this property where
10 the transactions are viewable, but the data, the PII, the names
11 and whatnot, are not viewable. They are sort of abstract
12 addresses.

13 Q. And when you say "abstract addresses," can you just
14 describe what you mean by that?

15 A. Sure. So if you see a transaction between party A and
16 party B, on a blockchain, instead of saying -- instead of
17 seeing, you know, party A was Joe Smith, and party B was Jane
18 Smith, instead, the only information you have about party A is
19 a long string of characters that are kind of not recognizable.
20 So it would be a long string of characters and numbers.

21 Q. Now, are you familiar with a type of crypto asset commonly
22 called cryptocurrency?

23 A. I am.

24 MR. BURNETT: Let's pull up government -- actually,
25 sorry.

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Jain - Direct

1 Q. What is cryptocurrency?

2 A. So cryptocurrency is a colloquial name for a crypto asset.

3 And since we said before, most blockchains, the way that they

4 are designed is one interacts with them by transacting.

5 Typically, a crypto asset is linked to a blockchain, and that's

6 the mechanism by which one can transact with the blockchain, by

7 transacting that crypto asset.

8 Now, colloquially they are called cryptocurrencies or

9 tokens sometimes.

10 Q. Are there different types of cryptocurrencies?

11 A. Absolutely.

12 Q. Can you give the jury a sense of how many just on an order

13 of magnitude basis?

14 A. Oh, more than ten thousand, and there's new ones being

15 created every day.

16 Q. What are some prominent types of cryptocurrencies?

17 A. Sure. So before we mentioned blockchains. The Bitcoin

18 blockchain has the Bitcoin cryptocurrency or crypto token.

19 Ethereum, additionally, has Eth or Ether as their crypto token.

20 Solana typically has its own cryptocurrency token as well. And

21 there are many others.

22 Q. Let's just take a look at an example.

23 MR. BURNETT: Mr. Sears, can you pull up Government

24 Exhibit 802.

25 THE COURT: Demonstrative or exhibit?

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Jain - Direct

1 MR. BURNETT: Sorry, sorry. Demonstrative 1802.

2 Q. And what's blown up on the screen here?

3 A. Right. So what we see here, the logos of many different
4 types of crypto tokens. And the two large ones that are
5 highlighted are BTC, which stands for Bitcoin; and ETH, which
6 stands for the ether token on the Ethereum network.

7 Q. And what are some things that typical cryptocurrency users
8 do with cryptocurrencies like Bitcoin or Ethereum?

9 A. Sure. So a typical user could buy a cryptocurrency; a
10 typical user, once they have that cryptocurrency, could
11 exchanges it for another cryptocurrency; and he could also sell
12 it to receive U.S. dollars.

13 Q. Are you familiar with something called a governance token?

14 A. I am.

15 Q. What's a governance token?

16 A. So a governance token is a specific category of
17 cryptocurrencies. And governance tokens are characterized by
18 the fact that the holder of a token -- so if that token was
19 acquired or that user holds a token, that token allows the user
20 the rights to participate in the governance of the project that
21 was issued by the token.

22 And by that I mean they have a say or a vote in some
23 of the main decisions of that project. They have a say in the
24 vote, for example, of how the treasury of a project is used.
25 So if a project has a large treasury, those funds are spent on

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Jain - Direct

1 various sorts of initiatives and they can vote on them.

2 Q. Are you familiar with something called a cryptocurrency
3 exchange?

4 A. I am.

5 Q. What's a cryptocurrency exchange?

6 A. So a cryptocurrency exchange is a place – and by "place" I
7 mean a virtual digital place – that a user can go to buy
8 cryptocurrencies and transfer cryptocurrencies into other
9 cryptocurrencies, to trade cryptocurrencies.

10 Q. Are there different types of cryptocurrency exchanges?

11 A. There are.

12 MR. BURNETT: Let's take a look at Government
13 Demonstrative 1803.

14 Q. All right. So one half of the screen says centralized
15 exchange, the second half says decentralized. Let's start on
16 the left side.

17 What's a centralized exchange?

18 A. Sure. So a centralized exchange is an exchange that's
19 operated by a central company that's operating the exchange.

20 So an example might be you go to Fidelity or to
21 Robinhood or Coinbase or Binance. These are names that are
22 large companies that offer as part of their products exchange
23 services. And again, they are run by companies and so it's a
24 centralized exchange.

25 Q. Now, turning to the other side of the screen, what's a

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1 decentralized exchange?

2 A. So a decentralized exchange essentially has the similar
3 exchange features as a centralized exchange. However, it's
4 characterized by the fact that instead of being operated by a
5 company like Fidelity, it's operated by a decentralized smart
6 contract, that is, a piece of computer code that lives on a
7 blockchain. And that computer code facilitates the same sorts
8 of transactions or similar sorts of transactions to achieve
9 exchange functionality that one might expect in a centralized
10 exchange.

11 Q. Now, in your experience in the context of decentralized
12 exchanges, is there typically still some entity that is in
13 charge of managing and running a smart contract?

14 A. Well, the smart contract that runs a decentralized exchange
15 typically lives on a blockchains, on a particular blockchain.
16 And there typically is an organization or what's called a DAO,
17 which is a decentralized organization, that typically has
18 oversight and development responsibilities, other sorts of
19 responsibilities, for ensuring the exchange operates according
20 to how the market expects it to.

21 Q. So I want to shift gears now from exchanges to the process
22 of buying and trading cryptocurrencies.

23 Can people buy cryptocurrency with dollars?

24 A. They can.

25 Q. What are some of the places people can go to exchange their

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Jain - Direct

1 dollars for cryptocurrency?

2 A. Sure. So some of the centralized exchanges that we
3 mentioned before offer this service. So you could go to, for
4 example, fidelity.com or robinhood.com or Coinbase. And if you
5 deposit - just like you do a bank deposit, you can bank deposit
6 U.S. dollars into those accounts. And then once you have the
7 U.S. dollars in those accounts, you can use those U.S. dollars
8 to buy Bitcoin or other sorts of crypto assets.

9 Q. Let's take a look at an example.

10 MR. BURNETT: I'd like to pull up Government
11 Demonstrative 1804.

12 Q. Do you recognize this screenshot?

13 A. I do.

14 Q. Where is it from?

15 A. So this is from a crypto exchange called Binance. So you
16 can see the Binance logo in the upper left-hand corner. And
17 this would be an example of a screen that a user might see when
18 they want to buy a crypto.

19 Q. So what can people do on this page?

20 A. So on the left-hand side of the page it suggests some hot
21 cryptos. And it gives you their prices, so you can get some
22 basic pricing data.

23 And on the right-hand side you'll see there's a toggle
24 window, buy and sell. And so this would be a screen that
25 allows the user to load in an order in order to buy, in order

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1 to sell. In this case, in order to buy.

2 Q. What are you buying with in this example?

3 A. Sure. So in this case, the user is putting together a
4 hypothetical order to buy Bitcoin by spending U.S. dollars. So
5 the user aims to spend 1,000 U.S. dollars to buy Bitcoin. And
6 based on the prices that Binance has in its system at the time,
7 it's offering that for \$1,000, you can receive back .01462116
8 Bitcoin. So clearly the price of Bitcoin here is larger than
9 1,000 U.S. dollars.

10 Q. When someone has cryptocurrency, they've purchased it, can
11 it be traded for other types of cryptocurrency?

12 A. Sure.

13 Q. What's it typically called when someone trades one
14 cryptocurrency for another cryptocurrency?

15 A. So typically that's referred to as a spot trade, where
16 you're changing one currency to another currency.

17 Q. All right. So let's look at a simplified example on
18 Government Demonstrative 1805.

19 At a high level, what type of transaction does this
20 diagram depict?

21 A. Sure. So as we mentioned before, this is a spot trade.
22 And this trade is set up to be a trade between Bitcoin and
23 Ethereum, between these two parties, the lady on the left and
24 the man on the right on the demonstrative.

25 Q. So let's walk through the spot trade from the perspective

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Jain - Direct

1 of the woman on the left.

2 What's that person selling?

3 A. So the woman on the left is selling Bitcoin and, in
4 particular, .05 of a Bitcoin.

5 Q. What's that person getting back?

6 A. In return, she is receiving one ETH or one Ethereum token.

7 Q. Now, do you see at the bottom there's a section labeled
8 price 0.05BTC/ETH?

9 A. Sure.

10 Q. What does that mean?

11 A. So that's essentially the price of Bitcoin relative to
12 Ethereum. So based on the price, that would set the ratio of
13 how much Ethereum she could get for her .05 Bitcoin.

14 Q. And why is the price expressed that way, the BTC/ETH?

15 A. It's really just a quoting convention. But really it's the
16 ratio -- the key concept is it's the relative value between
17 Bitcoin and Ethereum.

18 Q. All right. So let's go from this diagram to how spot
19 trading actually works on cryptocurrency exchanges.

20 What ultimately determines the relative value of two
21 cryptocurrencies on an exchange?

22 A. Right. So the relative value of a cryptocurrency on an
23 exchange always boils down to essentially the supply/demand of
24 a particular cryptocurrency pair -- so in this case, Bitcoin
25 versus Ethereum -- at a particular exchange, at a particular

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Jain - Direct

1 time. So if the timings change, the supply/demand could
2 change; if you have the same time but different exchanges, the
3 supply/demand could change; and if you have different
4 cryptocurrencies, different tokens that you're looking at, the
5 supply and demand can be different.

6 So the key point here is it's set based on the supply
7 and demand of a given token pair, at a given exchange, at a
8 given time.

9 Q. Are you familiar with something called an order book?

10 A. I am.

11 Q. What's an order book?

12 A. So an order book is a table that lists out essentially the
13 supply and demand of buy orders and sell orders in an exchange.

14 Q. So let's take an example. If someone wanted to place an
15 order to sell Bitcoin for ETH, like that spot diagram we were
16 looking at, how would they do that on an order book?

17 A. Sure. So you would sell the asset that you'd like to sell.
18 And you would put that, what they call offer, the price at
19 which you'd be willing to sell it at, into the order book. And
20 it's the job of the exchange to keep track of all of the orders
21 in the order book. And whenever there's a buyer and a seller
22 that have an agreement in terms of the price and the volume, it
23 will create a trade.

24 Q. Would that order necessarily end up as a trade?

25 A. No, it wouldn't necessarily end up as a trade because, for

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1 example, if a user just bid too low or is asking as a seller
2 for a very, very high offer, there might not be somebody else
3 on the other side of the trade that wants to take that deal.
4 So really an order book is a mechanism by which large groups of
5 people can negotiate with one another and come up with a good
6 deal, fair deal.

7 MR. BURNETT: Let's go to Government Demonstrative
8 1806 to look at an example.

9 Q. Where does this web page come from?

10 A. So this is a screenshot from Binance again.

11 Q. And what type of web page is this on Binance?

12 A. This is a spot trading screen.

13 Q. Now, do you see it says "ETH/BTC" at the top left?

14 A. I do.

15 Q. What does that tell you about the type of market that this
16 is showing information about?

17 A. Right. So this is the first of the three items that we
18 talked about. It's a particular cryptocurrency pair; so here
19 we're talking about ETH and Bitcoin.

20 Q. Now, do you see that on the left-hand side of the screen
21 there's a whole bunch of red numbers and then green numbers
22 below that?

23 A. Sure.

24 Q. What's that?

25 A. So what we're looking at on the left side is a

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1 visualization of a table that essentially is a snapshot into
2 the order book at this particular moment in time.

3 So as you can see at the green on the bottom, these
4 are bids, meaning users who have put in a bid to buy. And you
5 can see some of the bids are higher. So .05013 is the
6 highest -- yup, thanks for the zoom-in. Is the highest bid.

7 As you can see, there are other orders in the book
8 where people have bid lower than that, all the way down to
9 .05001. So that represents people that have put in bids into
10 the order book.

11 Conversely, the list at the top in red are the sells;
12 so people who put in sell orders at various prices in the order
13 book. And those bids and those offers are being run by --
14 being organized by the exchange. And it's the job of the
15 exchange to keep this order book functional, up to date, and to
16 the extent that there's a matching trade, it will produce a
17 transaction.

18 Q. Do you see that there's one bigger red number right in the
19 middle between the green and the red?

20 A. I do.

21 Q. What does that mean?

22 A. So that represents the last trade that was transacted
23 between parties operating this order book.

24 Q. Now, the screenshot that we've been looking at here is from
25 Binance; is that correct?

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Jain - Direct

1 A. Yes.

2 Q. Are there other types of -- other places to trade
3 cryptocurrencies like the same Ethereum/Bitcoin pair we've been
4 looking at?

5 A. Sure.

6 Q. In your experience, are the prices of cryptocurrency pairs
7 necessarily the same across different exchanges at the same
8 time?

9 A. No, no, they are not. This is an important point. They
10 are not necessarily the same because, remember, you have to
11 look at an individual pair -- so Ethereum/Bitcoin -- at a
12 location at a particular point in time.

13 So, for example, if we looked at Ethereum/Bitcoin at
14 the same time, but across different exchanges, there could be
15 different supply/demand on different exchanges which could
16 cause variations in the pricing.

17 Q. Why could there be different supply and demand conditions
18 on different exchanges?

19 A. Well, there just happen to be different buyers and sellers
20 that showed up to that particular exchanges, at that particular
21 time, for that particular asset.

22 Q. All right. So I want to shift gears now.

23 MR. BURNETT: And Mr. Sears, if you could pull up
24 Government Demonstrative 1807.

25 Q. And I want to focus on a particular type of cryptocurrency.

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1 Are you familiar with the term "stablecoin"?

2 A. I am.

3 Q. What's a stablecoin?

4 A. So a stablecoin is a type of crypto -- token cryptocurrency
5 that has a special design. And the design of a stablecoin is
6 advertised to be pegged to an asset like the dollar.

7 Q. When you say "pegged," what do you mean by that?

8 A. Meaning it's designed or advertised to try to maintain a
9 value of one U.S. dollar.

10 Q. Let's talk about two different types of stablecoins. Do
11 you see there's one kind of circle logo blown up at the top of
12 the screen here?

13 A. I do.

14 Q. What's that the logo for?

15 A. So that's USDC.

16 Q. What is USDC?

17 A. So USDC is a stablecoin that's issued by an entity called
18 Circle, that's a U.S. onshore entity.

19 Q. When you say U.S. onshore entity, what kind of entity is
20 Circle?

21 A. I believe it's an LLC or a corporation.

22 Q. What does Circle advertise as the stable value of USDC?

23 A. One dollar.

24 Q. Now, the other logo below that, the kind of green pentagon,
25 do you recognize that logo?

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Jain - Direct

1 A. Yes.

2 Q. What's that for?

3 A. That's for USDT, which is issued by Tether, which is an
4 offshore entity.

5 Q. What does Tether advertise as the value of USDT?

6 A. One dollar.

7 Q. From your experience, are you familiar with the financial
8 structures that underlie USDC and USDT?

9 A. I am.

10 Q. All right. Let's go to Government Demonstrative 1808, and
11 start with USDC.

12 Broadly speaking, what's the financial arrangement
13 underlying that cryptocurrency USDC?

14 A. Right. So broadly speaking, USDC is a reserve
15 collateralized stablecoin. So there's a lot of buzz words
16 there. But what it really means is that there is a fund that
17 holds U.S. dollars in reserve; and that U.S. dollar reserve
18 fund acts as the collateral for the tokens it then issues.

19 So as you can see by the demonstrative, there's
20 dollars flowing through to the issuer. The issuer sort of
21 keeps those dollars in a vault and issues tokens, these blue
22 tokens. In exchange, the tokens are said to be collateralized
23 by that dollar reserve.

24 Q. Now, that reserve, is it actually just dollars sitting in a
25 vault?

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Jain - Direct

1 A. It's invested in money market funds and cash and cash-like
2 equivalents that earn interest.

3 Q. Theoretically, what's the economic effect of having a
4 reserve like this on the market value of the tokens USDC?

5 A. Right. So the economic effect of having this collateral
6 fund to act as reserves is to give the market confidence that
7 their tokens are actually backed by a dollar. Absent the
8 reserve, the market may have greater skepticism that the tokens
9 that they hold that are being represented or advertised as
10 being worthy of a dollar are actually backed by a dollar. So
11 it's meant to be a market confidence anchoring mechanism.

12 Q. Now, turning to USDT, are you familiar with the financial
13 structure underlying that cryptocurrency?

14 A. I am.

15 Q. Without getting into too much of the details, how does it
16 compare to USDC?

17 A. So USDT is also advertised as a reserve-backed
18 collateralized stablecoin.

19 Q. So let's switch now from the kind of theoretical discussion
20 about how these work to the practical. Do USDC and USDT trade
21 on cryptocurrency exchanges?

22 A. They do.

23 Q. What determines their prices on those exchanges?

24 A. Again, it's going to be the same answer every time. What
25 determines the price is going to be the supply and demand of

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Jain - Direct

1 the particular token, on the particular exchange, at the
2 particular time.

3 Q. From your experience, are USDC and USDT always actually
4 worth a dollar on cryptocurrency exchanges?

5 A. They are not.

6 MR. BURNETT: Let's take a look at Government Exhibit
7 1358, which we should just show to the parties and the witness
8 at this point, and the Court.

9 Q. Do you recognize this?

10 A. I do.

11 Q. Now, at a high level, what is it?

12 A. So it's a chart showing the price in U.S. dollars of the
13 aforementioned USDC and USDT coins.

14 Q. And does this chart summarize voluminous data about
15 underlying prices?

16 A. It does.

17 MR. BURNETT: The government offers 1358.

18 THE COURT: Any objection?

19 MR. KLEIN: Objection.

20 THE COURT: You have an objection?

21 MR. KLEIN: Objection. Sorry, your Honor.

22 THE COURT: Okay. Let's do sidebar.

23 (Continued on next page)

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1 (At sidebar)

2 MR. KLEIN: Your Honor, my apologies for not raising
3 this earlier. I noticed the time frame is much broader. And
4 we're really focusing on a discrete time frame. It shows a lot
5 of discrepancies early on for both of those assets apparently.
6 What we're focused on is the time period in question.

7 So I'm fine with the exhibit, but in a more narrow
8 time frame

9 THE COURT: So you're making a 402/403 argument?

10 MR. KLEIN: Yes, your Honor.

11 MR. BURNETT: We're not just focused on the time
12 period at issue; we're focused on the way the value of USDC and
13 USDT works not just within the 15 minutes of the trading. And
14 that's what the chart is meant to illustrate.

15 THE COURT: For what reason?

16 MR. BURNETT: To help the jury understand that the
17 value of a USDC Mango swap has two components: The value of
18 the USDC and the value of the Mango. Oftentimes, the value of
19 USDC may be a dollar, sometimes it's not; but what matters is
20 that the value of the USDC is a component of this, not whether
21 at a particular moment USDC was trading at a dollar or not
22 trading at a dollar.

23 THE COURT: This goes to establishing that it was --
24 that these were mixed swaps?

25 MR. BURNETT: Yes. This goes to the medium of

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Jain - Direct

1 exchange point the defense has been raising, which I actually
2 don't think has any legal basis. But to the extent they are
3 going to raise it and say USDC is just a dollar, this shows
4 this is not, in fact, just a dollar.

5 THE COURT: Understood.

6 The objection will be overruled.

7 (Continued on next page)

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Jain - Direct

1 (In open court)

2 THE COURT: You may proceed.

3 MR. BURNETT: The government offers 1358.

4 THE COURT: It will be admitted.

5 (Government's Exhibit 1358 received in evidence)

6 MR. BURNETT: And Mr. Sears, with the Court's
7 permission, if you could please publish this to the jury.

8 BY MR. BURNETT:

9 Q. All right. So if everyone can see this, let's just orient
10 ourselves first.

11 What is on the left-hand side of this chart?

12 A. Sure. The left-hand side is showing price in U.S. dollars.
13 So one equals one dollar, the .9 is equal to 90 cents, and so
14 forth.

15 Q. What is the time period that this chart covers?

16 A. So from October 2018 to February 2024, expresses daily time
17 points.

18 Q. What's the blue line that's moving around here?

19 A. So the blue line is the daily price points of USDT, Tether.

20 Q. And how about the orange line, what's that?

21 A. USDC or Circle.

22 Q. What does this chart show about the typical market price of
23 USDC and USDT over time relative to the dollar?

24 A. Right. So this shows that while you said there are some
25 periods in which it is generally stable across the one-dollar

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Jain - Direct

1 level, there are time periods where USDT and USDC both diverge
2 with respect to one another and also on an absolute basis from
3 that dollar level.

4 Q. And I want to talk now about the economics behind what
5 we're seeing in this chart.

6 Could you explain why, from an economic perspective, a
7 token like USDC or USDT that's backed by reserves might not
8 actually trade for a dollar on the market?

9 A. Right. So, again, all boils back to supply and demand. So
10 supply and demand of this particular token, at that particular
11 time, on those exchanges. So, for example, there might be more
12 sellers than buyers in that order book. And that causes the
13 price to be depressed.

14 And typically, there are time periods where the prices
15 spike down, when there are so-called crises of confidence
16 moments in the market; periods of time where market
17 participants have less confidence or faith in the financial
18 mechanisms and the financial accounts of these types of
19 entities. And that would cause less confidence to show up in
20 the order books of exchanges and, therefore, prices to transact
21 at lower than a dollar.

22 (Continued on next page)

23
24
25

O49Ceis5

Kapil - Direct

1 MR. BURNETT: Mr. Sears, you can take this exhibit
2 down, please.

3 Q. I want to shift away from stable coins now.

4 A few minutes ago, you talked about a type of trading
5 called spot trading. Do you recall that?

6 A. I do.

7 Q. Is spot trading the only type of cryptocurrency out there?

8 A. It's not.

9 Q. What are other types of trades that are commonly available
10 on cryptocurrency exchanges?

11 A. So other types of trading include futures trading,
12 perpetuals trading, and other types of complex trading, such as
13 options and other derivatives.

14 Q. We're going to build to perpetuals trading, but I want to
15 start with futures trading.

16 A. Sure.

17 Q. Now, broadly speaking, are you familiar with what futures
18 are and how they're traded?

19 A. I am.

20 Q. How are you familiar with them?

21 A. Well, I traded both traditional futures as crypto futures
22 in my previous professional roles as a money manager, in
23 addition to having taught both traditional and block trade
24 futures.

25 Q. What is a future?

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Kapil - Direct

1 A. So, a future is a transaction to buy and sell something,
2 but unlike a spot transaction where two parties agree to buy or
3 sell something immediately, a future is a contract to do that
4 transaction at some point in the future. So there's some
5 agreed upon future date in which we agree to do a transaction,
6 but we enter into it now.

7 Q. Let's look a simple diagram starting with government
8 demonstrative 1809. This diagram is titled "Gold Futures
9 Trading." I want to start on the left side of the screen.
10 Before getting into the details of the transaction, what is on
11 the left side of the screen?

12 A. On the left side of the screen, we see the woman at the top
13 who seeks to deliver gold in three months and receive money for
14 that, receive \$2,000 for that in three months.

15 Q. So what is the woman on top promising to do in three
16 months?

17 A. So the woman at the top is promising to deliver one ounce
18 of gold or sell one ounce of gold for \$2,000 three months from
19 now. So the contract is entered into today, but the
20 transaction occurs three months from now.

21 Q. Let's move from the left side of the screen, then three
22 months pass, and we go to the right side of the screen. What
23 happens after three months?

24 A. So three months pass by. Now, the terms of the contract
25 must be fulfilled on the expiration date. So three months have

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Kapil - Direct

1 passed, that's the expiration date. Now the woman on the top
2 must sell one ounce of gold and receive \$2,000 in exchange for
3 that.

4 Q. Now, what if, at the time of this exchange, so three months
5 later, the price of gold is higher than \$2,000 an ounce, say
6 it's gone up to \$2,500 an ounce?

7 A. The point of entering into a futures contract is it's a
8 binding contract. And so, regardless of what the spot price of
9 gold is three months later, she still must honor that \$2,000
10 price. So she has to sell her gold for \$2,000 in three months.

11 Now, in this narrative that you outlined, if the price
12 of gold is \$2,500, unfortunately that's an unlucky outcome for
13 the lady at the top because she's forced to sell a piece of
14 gold that otherwise would be worth \$2,500, but she has to get
15 \$2,000 for it. So it's bad news for the lady at the top and
16 good for the gentleman at the bottom if the price moved up.

17 Q. Conversely, if the price moved down to say \$1,500 an ounce,
18 who wins and who loses?

19 A. Again, that would be bad news for our gentleman at the
20 bottom because he's forced to pay \$2,000 for an asset that's
21 now only worth \$1,500 for an asset, and it would be good news
22 for our lady at the top because she can sell her gold for
23 \$2,000, even though the spot worth of that is only \$1,500.

24 Q. Now, this shows the parties actually exchanging gold for
25 cash at the end of the three-month period; correct?

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Kapil - Direct

1 A. Correct.

2 Q. Are there other ways that a future can settle up?

3 A. Yes. So, in this particular demonstrative, we show that

4 three months later, the parties exchanged the gold and

5 exchanged the cash. That's known as physical settlement.

6 There's another mechanism of settlement called price settlement

7 or cash settlement in which there's not a two-party exchange of

8 items, there's just one party pays the other for the

9 difference.

10 Q. Could you explain how that would work in a situation like

11 we have here where the price of gold went up to \$2,500 an

12 ounce?

13 A. Sure. So, in the scenario where the price of gold went up

14 to \$2,500, essentially, the gentleman at the bottom would have

15 a \$500 profit and the lady at the top would have a \$500 loss.

16 So, essentially, what would happen if this contract was -- if

17 it was specified in the contract terms as a cash settle or a

18 price settled contract, is the gentleman at the bottom would

19 make a one-time, one-way payment or -- sorry. The woman at the

20 top would make a one-time, one-way payment of \$500 to the

21 gentleman at the bottom so that they settle up their profit.

22 Q. So let's bring this back to cryptocurrencies now. Are

23 there futures for cryptocurrencies?

24 A. There are.

25 Q. At a high level, how do those work?

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Kapil - Direct

1 A. Mechanically, they work similar to the example we described
2 here.

3 Q. Let's go to government demonstrative 1810, take an example.
4 We're going to use the same Bitcoin and Ethereum payer that we
5 used for our spot trading example. Okay?

6 A. Okay.

7 Q. Can you explain what the futures agreement is on the left
8 side of the screen?

9 A. Sure. So this is very similar to the prior example, so
10 that it's a futures contract. In this futures contract, the
11 lady at the top agrees to deliver or sell one Bitcoin. In
12 exchange, she's getting 20 Ether in return. The transaction is
13 not entered into today, the contract's not entered into today,
14 but the transaction will take place four weeks afterwards.

15 Q. All right. So four weeks pass, and what happens?

16 A. So four weeks pass, now the contract must be settled. So
17 the terms of the original contract are executed and the woman
18 at the top delivers a Bitcoin and receives 20 Ether in return.

19 Q. Now, what would happen if Bitcoin was worth more than 20
20 Ether after four weeks?

21 A. The relative value of Bitcoin relative to Ether went up.
22 That would be great news for our friend at the bottom because
23 he's receiving a Bitcoin that's worth more than it was when he
24 entered into the contract.

25 Q. How about the flip side?

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Kapil - Direct

1 A. Flip side, it would be worse for the seller, the lady at
2 the top.

3 Q. Now, in this example here, the parties are actually
4 exchanging Bitcoin and Ethereum at the end of the day; correct?

5 A. Correct.

6 Q. Is that the only way that a cryptocurrency future can
7 settle?

8 A. No. So this would be another example of a physical
9 settlement where the physical tokens are changing hand.
10 Another way that one could settle would be a price-based or a
11 cash-based settlement where, again, the difference in value is
12 computed and one of the parties makes a one-way, one-time cash
13 payment to make the other party whole.

14 Q. So I want to switch gears now. And you mentioned that
15 another product people trade on cryptocurrency platforms are
16 called perpetuals; is that right?

17 A. That's correct.

18 Q. Are you familiar with perpetuals and how they work?

19 A. I am.

20 Q. How are you familiar with them?

21 A. I've, again, researched them and taught them.

22 Q. So let's -- we'll dive into the details of how they work in
23 a minute, but let's start with an overview with government
24 demonstrative 1811.

25 At a very high level, what is a perpetual and what are

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Kapil - Direct

1 the key features of a perpetual?

2 A. Right. So a perpetual has some attributes. You can think
3 of them as somewhat similar to a futures contract, but they're
4 different in that, number one, there's no predetermined
5 settlement date. So in the past examples, in the example of
6 gold, the transaction would settle three months from now or
7 four weeks from now. In the case for perpetual, you know, the
8 word "perpetual" sort of means it exists in perpetuity until
9 the contract is terminated. So it's sort of *ad hoc* continuing
10 contract.

11 The second aspect of a perpetual is that a perpetual
12 is distinct from the actual assets that underlie it. So a
13 perpetual could be, for example, in the last example, Bitcoin
14 and Ethereum, it could reference Bitcoin and Ethereum in the
15 perpetuals contract; however, it does not actually cause an
16 exchange of the underlying assets.

17 And finally, a perpetual has multiple sources of value
18 in addition to simply the relative value changes in the assets.
19 There's some technical and other financial cash flows that
20 occur incident to the design and execution of a perpetual,
21 which we can talk about.

22 Q. We're going to go through these points in the form of an
23 example. Let's go to government demonstrative 1812. This is
24 titled "Perpetuals Creation."

25 Before you get into any details, what's the point of

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Kapil - Direct

1 this slide that the jury should be focused on?

2 A. Well, so, this is just walking through an example of a
3 perpetual contract, the types of things we need to know, and
4 the types of things the parties need to agree on before a
5 contract can be created.

6 Q. Now, let's start on the left side of the screen. Do you
7 see it's titled "(bid)"?

8 A. Yes.

9 Q. What does that mean?

10 A. So the buyer, or the bidder, is seeking to go long, the
11 perpetual. In this case, the perpetual is on Bitcoin, BTC, and
12 the relative value of Bitcoin relative to USDC, which, again,
13 is a crypto token. The buyer, or the bidder, seeks to go, what
14 they say, long. They seek to profit if that relative value
15 increases.

16 Q. Now, under "Position," do you see there's an entry that
17 says "Bid"?

18 A. I do.

19 Q. It says 70,000 USDC/Bitcoin?

20 A. Correct.

21 Q. What does that mean?

22 A. That's the price at which she's willing to bid into the
23 order book to create this perpetual. So she's willing to pay
24 up to 70,000 USDC per Bitcoin as the perpetual opening creation
25 price.

O49Ceis5

Kapil - Direct

1 Q. Now, does that mean that this person is actually offering
2 to pay 70,000 USDC per Bitcoin right now?

3 A. No. So, again, this is a perpetual, so it's a kind of
4 derivative. So the derivative has a reference price and
5 there's an underlying Bitcoin market that this is referencing.
6 So she's trying to create or bid on a perpetual, and that's
7 distinct from her trying to bid on Bitcoin. That would be a
8 separate kind of transaction.

9 So, although this perpetual references Bitcoin, it has
10 an entry price of Bitcoin, it does not actually purchasing
11 Bitcoin or transacting in the underlying Bitcoin.

12 Q. Now the third data entry under the left side is size,
13 10 Bitcoin. What does that mean?

14 A. So 10 Bitcoin, it's just a size multiplier. It just
15 multiplies the contract by 10 in terms of its value and its
16 movements. So it references as an underlier 10 Bitcoin. But
17 again, she's not actually purchasing 10 Bitcoin, she's entering
18 into a contract that references 10 Bitcoin.

19 Q. Fundamentally, what is the person on the left betting?

20 A. Fundamentally, the person on the left is going long or
21 betting that Bitcoin is going to appreciate relative to USDC.
22 In particular, she's betting that it's going to appreciate to
23 some value more than 70,000 USDC per Bitcoin.

24 Q. Let's move from the left side of the screen to the right
25 side. What is this person, the seller, betting?

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Kapil - Direct

1 A. So the seller is betting the opposite. In trading
2 parlance, you would say he's a short. So, the seller is
3 entering into the perpetual with the idea that BTC will fall
4 relative to USDC. So the opposite position as the long. In
5 this particular example, he's said to have matching terms,
6 meaning the price at which he's willing to enter into the
7 perpetual references the same Bitcoin price, 70,000 USDC, and
8 he's also matched in the stocks. He's also willing to do this
9 contract referencing 10 Bitcoin as the underlying asset size.

10 Q. To be clear, is this seller offering to exchange any
11 Bitcoin or USDC at the time of the transaction?

12 A. No. No. So this is a perpetual contract that, and the
13 contract terms references Bitcoin and USDC and the size and the
14 entry price.

15 Q. Let's go to government demonstrative 1813. How does this
16 bid and this offer actually result in a trade?

17 A. Sure. So, one might recall before, when we were looking at
18 the order book, various bids and various offers go into the
19 order book, and when they match, it's the job of the exchange
20 to create a trade, create a deal.

21 And so, in this case, because both of them have the
22 same -- they're willing to enter into the perpetual at the same
23 price, the same reference price, 70,000 USDC, and the same
24 size, they would enter their respective orders into an exchange
25 and it's the exchange's job to notice that they have matched

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Kapil - Direct

1 positions and it would create a deal or create a contract. And
2 so, you know, that's represented in this contract here.

3 And so, the deal is we have a contract. The starting
4 value of that contract is 70,000 USDC per BTC, and the
5 amounting size of the underlying is 10. And the woman on the
6 left is the long part of the contract, so she's aiming to
7 profit if Bitcoin rises relative to USDC, and the gentleman on
8 the right is the short, the short side of the contract, who
9 intends that the price go down relative to USDC and Bitcoin.

10 Q. Let's go to government demonstrative 1814. Now, when you
11 were introducing perpetuals, you referred to the idea that
12 perpetuals have multiple sources of value; correct?

13 A. They do, correct.

14 Q. Now, let's walk through those. You have labeled here value
15 source No. 1, change in the relative value of underlying
16 cryptocurrencies. Can you explain what that means?

17 A. Sure. And that's what we meant by the long and the short.
18 So, essentially, the long position refers to if the change of
19 the cryptocurrency's relative value goes up, the long benefits,
20 and if the change in the relative value of the cryptocurrencies
21 go down, the short benefits. So that's what I mean in terms of
22 the change of the relative value of the cryptocurrencies. That
23 is, the prices can move.

24 Q. For value source 2, you have the funding rate. What's the
25 funding rate?

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Kapil - Direct

1 A. Right. So the funding rate is a little bit technical and
2 it concerns the operation of the perpetual, but there is a
3 notion of an oracle. An oracle is a type of price that is
4 taken from third-party sources, and the oracle acts as a
5 reference price.

6 Similarly, there is a mid price for the actual
7 perpetual, the trading price of the perpetual. And the funding
8 rate is a payment that's made based on the difference of the
9 two. We'll have to walk through an example to see how it
10 works. Essentially, it's a kind of mechanism to anchor the
11 price of the perpetual to third-party independent benchmarks.

12 Q. It's a lot to cover, but let's break it into kind of
13 bite-size portions here, starting with the first value source.
14 If we could turn now to government demonstrative 1815. So
15 right now we're just focusing on value source 1, the relative
16 value of the cryptocurrencies. Do you see there's a long
17 position and a short position listed out here on the left side
18 of the screen?

19 A. I do.

20 Q. Do you recognize those positions?

21 A. I do.

22 Q. From what?

23 A. This is the contract that was created in the last
24 demonstrative.

25 Q. So what's the long and the short position here?

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1 A. So the one on the top is the long, the gentleman at the
2 bottom is the short, and the contract was entered into with a
3 starting reference value of 70,000 USDC per Bitcoin and a size
4 of 10 Bitcoins, which just summarizes the contract terms on the
5 left.

6 Q. Let's move from the left side of the screen to the middle
7 of the screen. Do you see there is a bar there that has 70,000
8 USDC per Bitcoin?

9 A. Sure.

10 Q. What does that mean?

11 A. That's just the price.

12 Q. And how does that compare to the original reference price
13 in the contract?

14 A. Right. So, as of this moment in time, the price is the
15 same as the reference price that we opened the contract into.
16 And so, nothing's happened.

17 Q. So let's go to the right side. Do you see there are two
18 boxes, one along the long position, one along the short
19 position, and they're both called "Unsettled Gain Loss"?

20 A. Correct.

21 Q. What does "Unsettled Gain Loss" mean in this context?

22 A. Well, in this context, nothing's happened to the price.
23 Therefore, neither party has a profit or a loss.

24 Q. All right. So let's walk through some different examples
25 here.

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1 MR. BURNETT: Mr. Sears, if you can go to government
2 demonstrative 1816.

3 Q. All right. Let's start by focusing on the middle of the
4 screen. That yellow bar, has anything changed about it?

5 A. Sure.

6 Q. What's changed?

7 A. So now the yellow bar shows a 5,000 USDC increase in the
8 price of Bitcoin relative to USDC.

9 Q. So it's 75,000 USDC compared to the 70,000 USDC reference
10 price; correct?

11 A. Correct.

12 Q. Let's look over to that gain/loss section, starting with
13 the long position. What effect did that increase in the price
14 of Bitcoin, relative to USDC, have on the unsettled gain and
15 loss?

16 A. So, this is great news for our friend, the woman at the
17 top, the long, because she was long at an entry price of
18 70,000, a reference price of 70,000, and she gained 5,000 per
19 Bitcoin. And so, we see here unsettled gain is 50,000 USDC.
20 So that's the 5,000 per Bitcoin gain that she received on the
21 price, and the position is for 10 Bitcoin. So 5,000 times 10
22 would equal 50,000 USDC. So she's in a gain of 50,000 USDC
23 based on the market prices and the fact she was long.

24 Q. Let's make sure we're clear about where that multiplier
25 comes from. How much did the price of USDC per Bitcoin

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1 actually go up?

2 A. 5,000.

3 Q. Why did her gain go up by 50,000 as opposed to just 5,000?

4 A. Because the initial contract was not struck for one
5 Bitcoin, but for 10 Bitcoin. So if you see on the box to the
6 right, right below her, the size was 10 Bitcoin. So that 10
7 Bitcoin acts as a multiplier that just magnifies the gains of
8 the winning party and magnifies the losses of the losing party
9 proportionately.

10 Q. If that size had originally been, say, 100 Bitcoin instead
11 of 10 Bitcoin, what would that do to the gain and the loss?

12 A. Right. So if you increase the size by a factor of 10, it
13 just magnifies the gains-loss by 10. So in this example, if it
14 was 100 Bitcoin, she would have about an unsettled gain of
15 500,000 USDC.

16 Q. Let's turn now from the trader on the top to our friend on
17 the bottom. What position is he in now?

18 A. Right. So bad news for the gentleman at the bottom. He
19 had the opposite position, he was short. So the shorts are
20 betting the prices are going to go down, but the price went up,
21 so he has to pay. And again, he's down 5,000 on the price and
22 the contract was for 10 Bitcoin. So his overall loss is
23 negative 50,000 USDC.

24 Q. Now, I want to focus on one thing here. Alongside both
25 parties, it says, "Unsettled Gain/Loss"?

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1 A. Correct.

2 Q. Can you explain what the "unsettled" part means?

3 A. Sure. So -- and again, this is a little bit technical.

4 This is another kind of value source, but because the perpetual
5 is outstanding, perpetually outstanding, there needs to be a
6 procedure in which the loser pays the winner at some point, and
7 that's called the settlement procedure. And so, timing of the
8 settlement procedure is another factor or another value lever
9 that affects the overall economics of a perpetual contract.
10 Right now, they have not settled their balances, so they're
11 just wearing these unsettled balances of 50,000 or negative
12 50,000, but there's a mechanism in the contract where the
13 winning party could force the losing party to pay up. And, for
14 example, the woman at the top could compel the gentleman at the
15 bottom to settle the balance, in which case both of those
16 accounts will go to zero, she would receive a payment for the
17 \$50,000 that she's owed, and then the contract would continue
18 on with \$7,500 as being the new reference price.

19 Q. If one party were to force the other party to settle, what
20 do they actually exchange?

21 A. Well, they exchange USDC.

22 Q. Do they exchange Bitcoin?

23 A. No.

24 Q. Now let's look at one more example on this value point. If
25 we can go to government demonstrative 1817. Let's start by

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1 focusing on the yellow bar again in the middle. What's
2 happened to the price now?

3 A. Right. So this is the opposite scenario where the price
4 went down from 70,000. And so, this is good news for our
5 friend, the short at the bottom, and bad news our friend, the
6 lady at the top, who was long.

7 Q. What happens to the unsettled gain/loss for the short
8 position on the bottom?

9 A. So, because the price went down and the short was on the
10 side of the contract that the price would go down, he
11 experiences a gain of 5,000, the 70,000 entry price minus the
12 65,000 USDC current price. So the gain of 5,000 times the size
13 of 10 BTC equals the short having an unsettled gain of 50,000
14 USDC. Conversely, the long has the opposite, negative 50,000
15 USDC loss.

16 Q. Now, I want to focus on this yellow bar that you've been
17 using to talk about the price of the perpetual. Okay?

18 A. Sure.

19 Q. In the context of perpetuals, where does that price
20 typically come from?

21 A. Sure. And this is a little bit of a technical point to try
22 and walk through, so I'm just going to try and pause and
23 explain it. There is a mechanism in the contracts in which the
24 contract needs to know a price to mark the position for the
25 purposes of settlement. It needs to know exactly which price

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1 to use to compute the unsettled gain or the unsettled loss.

2 That price comes from something called an oracle, or an oracle

3 price. That oracle is an attempt to look at or sample

4 third-party independent pricing sources and come up with some

5 kind of average that both parties can have some reasonable

6 expectation to agree would be a fair price to settle against.

7 Q. Why is a oracle needed to set the price of perpetuials?

8 A. Well, both parties need to have belief that their position

9 is going to be marked fairly for the purposes of settling up

10 their cash balances. And so, the oracle is meant to take

11 independent third-party sources and, again, come up with some

12 kind of trusted third-party neutral source of pricing.

13 Q. So let's look at a demonstrative example of how these

14 oracles work starting with government demonstrative 1818. So

15 it looks like there are -- or what are the three things listed

16 on the side here, labeled exchange 1, exchange 2, and exchange

17 3?

18 A. So those graphics are just meant to represent different

19 exchanges, different third-party exchanges that are a source of

20 pricing information.

21 Q. When you say "exchanges," do you mean cryptocurrency

22 exchanges?

23 A. That's right, exchanges that have this USDC-Bitcoin pair

24 trading.

25 Q. What's the price listed next to each exchange?

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1 A. Well, remember we talked about before, prices are always a
2 function of supply and demand of a particular cross pair
3 currencies, in this case, USDC Bitcoin, at different
4 exchange -- at a particular exchange. So here, we have three
5 different exchanges at the same time. So if this is the same
6 time, essentially what we're seeing is different exchanges
7 reporting three different prices based on where those
8 individual exchanges see the price of USDC Bitcoin at that
9 particular time.

10 Q. So let's add the oracle in now with government
11 demonstrative 1819. So what role does the oracle serve in a
12 perpetual?

13 A. So the oracle serves the role of sampling the various input
14 exchange prices and using a mechanism or an algorithm or code
15 to essentially compute an oracle price.

16 Q. So could you just use this diagram as an example of what
17 the oracle was doing to take these three different prices on
18 three different exchanges and come up with one price for the
19 perpetual?

20 A. Sure. So -- well, as an aside, oracle design is a very,
21 very rich field of research, and there's many different ways
22 oracles can have algorithms to compute an oracle price. For
23 example, one could take the average. If one just took the
24 average here, it would equal 7100. One, for example, could
25 kick out the highest and lowest extreme value, but there's

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1 different ways and different methodologies people use to create
2 oracles.

3 Q. In this example, what price does the oracle come up with?

4 A. It kind of comes up with an average price, 7100. 71,000.

5 Q. All right. So let's go back to our home base value slide
6 with government demonstrative 1820. So we've covered this
7 first value source, the change in the relative value of the
8 cryptocurrencies. Let's switch now to value source number 2,
9 the funding rate. Could you summarize again, before we walk
10 through the example, what the funding rate is?

11 A. Sure. So, we've established there's an oracle. The oracle
12 is constantly publishing an oracle price, and that's meant to
13 be a third-party kind of reliable price. Separately, we have
14 the price at which the perpetuals are trading at in the order
15 book of the perpetuals. And so, oftentimes, as a shorthand,
16 people take the mid price or the middle of the bid in the ask.
17 If you recall, there was an order book and there was a bunch of
18 bids and there was a bunch of asks, and if you take the middle
19 of them, that's what's called the mid price. So sometimes the
20 mid price deviates from the oracle price. And essentially, the
21 funding rate is a mechanism that causes these prices to
22 converge by creating transfer payments between the two sides,
23 the longs and the shorts, depending on which side is to be
24 gained from the deviation between the oracle price and the mid
25 price in the order book.

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1 Q. Let's use some visuals to walk through how that works
2 starting with government demonstrative 1821. All right. So,
3 let's just focus on the bottom half of the slide for the
4 moment. Do you recognize what we're seeing on the bottom half
5 of the slide here?

6 A. I do. That's the oracle from the prior example.

7 Q. So this is the oracle that produced the price of 71,000
8 USDC per Bitcoin?

9 A. That's correct.

10 Q. All right. Now, there's another icon at the top here
11 that's labeled "The Order Book Mid Price." Could you explain
12 what that means?

13 A. Right. So, again, the order book mid price is separate
14 from the oracle price, so the oracle price we got by computing
15 these third-party averages. There's a separate order book for
16 the perpetuums. The order book that we entered our buys and
17 sells into to create the perpetual. So that order book is also
18 going in real time. The mid price on the order book is what's
19 being reported as the 70,000 USDC. So again, if you take the
20 best bid that's sitting in the order book and the best offer
21 that's sitting in the order book and you average the two to
22 find the middle of them, that's what they're using as a proxy
23 for the mid price of the order book.

24 Q. And those bids and offers, is that like the bids and offers
25 we saw on that slide showing the creation of the perpetual,

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1 that reference price?

2 A. Yeah, that's right. And that's going to move around by the
3 supply and demand that's in the order book.

4 Q. Now, why might the order book mid price be different from
5 the oracle price?

6 A. It's the same exact explanation because the reason is
7 prices vary based on the supply and demand of a given
8 instrument, at a given time, at a given place, at a given
9 exchange. And so, the order book is one place where there's
10 prices and these three exchanges are -- constitute other venues
11 where there's supply and demand and the oracle is trying to
12 average all of them. But the key here is they're not the same
13 place. And so, as a result, there's going to be different
14 supply and demand and, therefore, different prices.

15 Q. So let's bring that back to the funding rate now. In this
16 example, the oracle price is higher than the order book mid
17 price; right?

18 A. That's correct.

19 Q. So under the funding rate, who pays whom in this situation
20 when the oracle is higher than the mid price?

21 A. This is a perfect example of why the funding rate exists.
22 Right now, the oracle price is 71K; however, the order book mid
23 price is only 70K. So the order book mid price, the price in
24 the order book is 1,000 cheaper than the oracle price. So as a
25 result, the mechanism needs an incentive for the longs to bid

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1 up the order book price, so it converges to the oracle price.

2 So this funding payment ends up being a payment that the shorts
3 pay to the longs to induce those two prices to converge. So
4 it's a separate payment, it's a separate value stream other
5 than just the prices, the relative prices. This is a separate
6 payment that, in this case, the shorts would make to the longs
7 so as to induce those rates to converge, those prices to
8 converge.

9 Q. Let's look a vitalization of that. If we could go to
10 government demonstrative 1822. So we have our -- who do we
11 have as our two parties here again?

12 A. Same parties as when we entered into our contract. The
13 woman at the top is the long and the gentleman at the bottom is
14 the short.

15 Q. See there's a black line in the middle of the screen that's
16 labeled "Oracle"?

17 A. Yes.

18 Q. What's that designed to represent?

19 A. So that just shows the oracle price.

20 Q. And do you see there is a blue dotted line that's labeled
21 "Order Book Mid Price"?

22 A. Correct.

23 Q. What's that designed to represent?

24 A. That's meant to show the oracle -- I'm sorry. The order
25 book mid price, the mid price on the perpetuals order book and

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1 it just moves around.

2 Q. So when the order book mid price is above the oracle price,
3 who makes payments?

4 A. So, if the order book mid price is above the oracle, that
5 means the order book is rich to the oracle. And essentially,
6 the longs would pay the shorts to induce more sellers to make
7 those prices converge.

8 Q. And what is the long paying?

9 A. The long would pay the funding payment.

10 Q. Is that USDC, the tokens we were talking about?

11 A. Yes. So this is a separate payment than the payment that's
12 due to the changes in prices or the value string, one. This is
13 a separate payment that's entirely related on the difference
14 between the order book mid price and the oracle price.

15 Q. All right. Now let's look at the other example where the
16 blue dotted line dips below the oracle price. When that
17 happens, who pays whom?

18 A. Sure. So in this example, which is what we had in the last
19 slide, the mid price is trading cheap to the oracle, so that
20 means the mechanism produces an incentive for there to be more
21 longs. So the short pays the longs in an effort to induce the
22 prices to converge.

23 MR. BURNETT: Your Honor, I'm just mindful of time. I
24 think now is kind of a natural break point.

25 THE COURT: All right. So we will continue tomorrow.

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1 Thank you.

2 So we are done for today. We're nine minutes behind
3 schedule, but we're still on pace. So I will see everyone here
4 tomorrow. Again, be here by 8:45 a.m. at the latest so that we
5 can get promptly started at 9:00. Thank you very much for all
6 your hard work today. And you can head back to the jury room
7 and you can leave your notepads back there. Please don't take
8 them home.

9 I'll repeat my instructions that I've given you about
10 five times. No talking, no research of any kind, don't talk to
11 any of the parties, and be well. We'll see you tomorrow.

12 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Please be seated.

3 Mr. Jain, you'll remain under oath. So you're not to
4 have conversations with anyone concerning your testimony or
5 this case, and that includes all the lawyers on the
6 government's side. Okay?

7 THE WITNESS: Of course.

8 THE COURT: All right. We'll see you tomorrow.

9 THE WITNESS: Thank you, your Honor.

10 (Witness not present)

11 THE COURT: Mr. Burnett, first of all, how much longer
12 do you think you have with Mr. Jain?

13 MR. BURNETT: Probably 15 to 20 minutes. Not a whole
14 lot left.

15 THE COURT: And who do you have next?

16 MR. BURNETT: It will be Tyler Shipe.

17 THE COURT: And after that?

18 MR. BURNETT: I think it will be Chris Hermida after
19 that.

20 THE COURT: How long for both of those witnesses?

21 MR. DAVIS: Shipe would be probably a bit over an hour
22 for direct. Mr. Hermida's direct is probably somewhere in that
23 half-hour ballpark, to be a little conservative.

24 THE COURT: Who's after that?

25 MR. BURNETT: After them would be Mr. Molina from FTX.

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1 I'd say that's probably a 15ish-minute witness, and then it
2 would be Special Agent Kudirka, who's probably another
3 10-minute person. My guess with cross examinations, that will
4 probably take us to the end of the day.

5 THE COURT: Not holding you to it, but how many
6 witnesses after that?

7 MR. BURNETT: So the next witness would probably be
8 Special Agent DeCapua. In terms of total witnesses for the
9 rest of the case, we have to talk as a group based on how stuff
10 came in today. Think we're still definitely on track for us to
11 finish our case at some point on Friday.

12 THE COURT: Okay. Understood.

13 So what issues should we productively take care of now
14 that will bear on exhibits or testimony tomorrow? I'll turn
15 first to Mr. Talkin or Mr. Klein on your side.

16 MR. KLEIN: Your Honor, they're going to give us those
17 exhibits for those witnesses. We don't have them necessarily
18 yet. Once we get those, we will -- like, we did try to flag
19 them. I apologize about that exhibit earlier, but it came in
20 late last night. We obviously had a lot of other things.

21 THE COURT: That's fine. And so, from the government.

22 MR. BURNETT: So there are a few things from yesterday
23 that I think might make sense to tee up for today.

24 So, the first one relates to the Waves complaint that
25 the court excluded. I think -- totally understand the thinking

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1 on excluding the complaint itself. I think, from the
2 government's perspective, it's important for the jury -- the
3 jury will have the Google document. There was Government
4 Exhibit 609. But I think, from the government's perspective,
5 because we have to prove knowledge of unlawfulness and the
6 Google document doesn't get into, like, laws or anything like
7 that, it's important for us to be able to establish that there
8 was in fact a lawsuit based on the thoughts that Mr. Eisenberg
9 was putting in that Google document and that that lawsuit was
10 based in part on the Commodities Exchange Act.

11 We think one way to establish that without actually
12 introducing the complaint would be to introduce, for example,
13 like the civil cover sheet from that docket because that would
14 show there was a lawsuit between Avraham Eisenberg and the
15 folks he identifies in the Google doc. And it shows that there
16 were claims, including under the Commodities Exchange Act for
17 manipulation without including all of the -- like texts of the
18 complaint or any of the texts of the complaint, which is what
19 our understanding was the Court found problematic from a 403
20 perspective.

21 THE COURT: Mr. Klein, or whoever is going to handle
22 that from your side.

23 MS. MARTABANO: Your Honor, I believe that the one
24 issue is that exhibit 609, the metadata shows that it's
25 actually from December 24 of 2022. So it doesn't show that he

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1 knew or had reached that conclusion prior to that time. So I
2 don't think that that's a fair point.

3 On the complaint, again, the civil cover sheet is
4 likely to include, you know, the type of claims in the
5 descriptions, and that is just going to invite a trial within a
6 trial. I think this touches on, you know, things already
7 raised today by the government in its opening statement about
8 the search records and his Tweets and other things that sort of
9 get into the potential complexity of the government's
10 regulation in this space.

11 And the government has been seeking to preclude
12 Mr. Eisenberg from presenting any evidence about the regulatory
13 uncertainty in this case because one arguable interpretation of
14 these exhibits is to say, actually, he was researching this
15 because each of these was different and there wasn't clarity.
16 And the SEC brings cases in this space and the CFTC brings
17 cases in this space, and the DOJ bring cases in this space.
18 And, in fact, in good faith, I couldn't tell what would be
19 illegal or not. Instead, they're just seeking to say, well, he
20 looked at this and that establishes that he knew, when, in
21 fact, it doesn't establish that.

22 In addition to that, each of those cases --

23 THE COURT: Sorry to interrupt, but I just want to
24 make sure that I'm following everything you're saying.

25 So first of all, document 609 was one of the documents

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1 that I indicated I would overrule the objection on; right?

2 MS. MARTABANO: Yes, your Honor.

3 THE COURT: And you're saying that this document was
4 actually from December of 2022?

5 MS. MARTABANO: Based on exhibit 609A, which purports
6 to be its metadata, yes, your Honor.

7 MR. BURNETT: I can actually give some color on that.
8 So because it's a Google doc from his computer or from his
9 Gmail, there are like multiple different versions. There is a
10 version we produced last night that was from October 8th, 2022,
11 not from December 24th, 2022. So, the version of the Google
12 Docs that we can offer, which is identical, other than the
13 metadata, is from before the attack. But also, more
14 importantly, the lawsuit he filed was from July 2022, which
15 is --

16 THE COURT: I've got you. I'm just trying to work
17 this. I just wanted to make sure there wasn't a further issue
18 on exhibit 609 that I did not detect.

19 So you're going to make that change to 609A?

20 MR. BURNETT: Yes.

21 THE COURT: So it reflects a date that would be before
22 the time of the alleged offense?

23 MR. BURNETT: Yes.

24 THE COURT: Now, I interrupted you. I'm so sorry.

25 609, I believe we've addressed that.

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1 As to the complaint, the government says, well, there
2 was a complaint that was filed and it corresponds to 609 in
3 terms of what it's talking about. So what if the government
4 was just to put in the cover sheet showing what came of the
5 types of things that Mr. Eisenberg was discussing in this
6 document without getting into any of the attorney designations
7 of anything? So why doesn't that solve the issue or does it
8 raise the same problems?

9 MS. MARTABANO: I think it raises similar problems. I
10 think that it doesn't map exactly onto it. In fact, it's
11 talking about the fraud, but it's not the same as the civil
12 complaint. I think in addition to that, as we wrote into our
13 papers, it would imply -- it would open up a trial within a
14 trial about why it's the same or different than the case at
15 hand here. And it would involve privileged discussions between
16 Mr. Eisenberg and his lawyer, which include things as to why
17 certain claims were included and whether Mr. Eisenberg was even
18 aware that his lawyer had styled claims in a certain way at the
19 time that that complaint was filed.

20 MR. BURNETT: Actually, I can speak to that, too.

21 We just got from the court in the District of Puerto
22 Rico -- we had litigated to get an affidavit Mr. Eisenberg
23 filed in that case. We just got it I think last night. And
24 that affidavit, he says, I read the complaint, I understand
25 everything that's in it, and it's all factually accurate, among

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1 other things. We're continuing to review the affidavit. So
2 the idea that Mr. Eisenberg, like, didn't know what his lawyers
3 were doing --

4 THE COURT: What was the date of that affidavit?

5 MS. MARTABANO: Your Honor, just one second.

6 (Pause)

7 MS. HUANG: It was July 1st, 2022, your Honor. We
8 just got this at 11:20 this morning.

9 THE COURT: It was not on the public docket?

10 MR. BURNETT: No, it was under seal.

11 THE COURT: And you're going to introduce that
12 document into evidence?

13 MR. BURNETT: We haven't had the chance to even read
14 it.

15 I think, just to answer the point that Mr. Eisenberg
16 maybe didn't even know what was in the complaint is just
17 demonstrably false.

18 THE COURT: Hypothetically speaking, if that were to
19 be put in, and you would be able to establish that there need
20 not be any inquiry into attorney-client privileged
21 communications or anything else concerning the underlying basis
22 for the complaint because you have a document submitted with a
23 court from the defendant that indicates that he had read and
24 understood what had been submitted as reflected in the
25 complaint.

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1 MR. BURNETT: That's right. And I think you can't use
2 the fact that there are privileged communications behind your
3 public statement as a shield for your public statements.

4 THE COURT: Well, I think that the argument is that a
5 complaint is just put in by the lawyers and sometimes the
6 clients won't know exactly what's in the complaint.

7 MR. BURNETT: Sure. I think the affidavit solves
8 that.

9 THE COURT: That's what I'm getting to.

10 So, from the defense side, in light of that, it seems
11 like unless you have another argument as to the affidavit why
12 that wouldn't connect the dots in a way that would avoid the
13 objection on attorney-client privilege, the government is still
14 offering to not put in this complaint, but rather put in the
15 civil cover sheet. And so, I'll just leave that with you.

16 I think that I was with you, but if there's actually a
17 document that is in a court docket and there's not some other
18 problem with it because, again, maybe you have not seen this,
19 it was just obtained last night, so there may be some other
20 issues. I'm happy for you to raise those with me. Assuming
21 there is no other issues, it would seem like there would not
22 need to be any inquiry underneath the surface of the complaint.
23 But can you tell me if I'm missing something here?

24 MS. MARTABANO: Thank you, your Honor. We're not
25 aware of it, we have not seen it, so we do need a chance to

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1 arrive it.

2 As I understand it from a quick colloquy here, the
3 affidavit actually predates the complaint filing. And so,
4 there may be privileged communications that reflect that edits
5 were made after that time of the affidavit. And so, we just
6 don't know. And so, it may still invade the privilege and we
7 haven't seen the affidavit ourselves.

8 THE COURT: Is it possible for the parties to reach a
9 stipulation that there was this document and it ultimately
10 became a case filed in this court with these claims, period,
11 and then be done with it? I mean, in terms of giving the
12 context for the underlying Google doc, which would be coming
13 in.

14 MR. BURNETT: I think it could be, but we just need to
15 read the affidavit first to see if there's other --

16 THE COURT: Let's pick this up in the morning, take a
17 look at these documents, and we'll figure it out.

18 MS. MARTABANO: Yes, your Honor. Thank you.

19 THE COURT: So what's next?

20 MR. BURNETT: That was one piece. The next is
21 Government Exhibit 111, which was the exhibit that referenced
22 Mr. Eisenberg's plans to be in Puerto Rico of Sukkot. So that
23 one, I think we're not asking right now to just put it in cold.
24 What I want to have the Court -- we wanted to flag and have the
25 Court keep an open mind to was basically the government's

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1 thought process here was that after Mr. Eisenberg was arrested,
2 we had a conversation with his attorneys – I can't remember if
3 it was these attorneys or his previous attorneys – about the
4 flight risk. They said, well, Mr. Eisenberg wasn't fleeing the
5 country, he had traveled to Israel because he had plans to like
6 celebrate Sukkot there, which is why we thought this exhibit
7 was important to if that argument comes in, rebut the idea he
8 had -- that the reason for the travel was for a holiday, not
9 for flight. So I don't think the opening that Mr. Talkin gave
10 has opened the door to that argument. But to the extent that
11 like the defense suggests there was some other reason for the
12 trip, I think we would ask the Court to reconsider our ability
13 to put this in because it clearly establishes that he planned
14 to be in Puerto Rico for the holiday prior to his attack.

15 THE COURT: Mr. Talkin, didn't you say that the reason
16 for the trip was to cool things off?

17 MR. TALKIN: Yes.

18 THE COURT: I didn't think you made any argument.

19 MR. TALKIN: I don't think they're saying that, but to
20 put this to rest, we're not going to argue he didn't go there
21 to celebrate a religious holiday.

22 MR. BURNETT: That should put that to bed then.

23 There are a few Rule of Completeness issues that were
24 teed up already that we think we would like to address, but
25 they affect whether we would want to put certain pieces of

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1 evidence in or not. I think, from our perspective, like 108,
2 404, and I guess 401, too, are the ones that come to mind as
3 the ones that we think are worth addressing now.

4 THE COURT: Here's the question: did I get the
5 completing statements, because that was one of the issues --

6 MR. BURNETT: I think Ms. Martabano sent them in last
7 night.

8 MS. MARTABANO: Yes, your Honor, in the wee hours,
9 1:00 or 12:00 a.m.

10 THE COURT: What are those numbers?

11 MR. BURNETT: So the exhibit numbers were 108, 404,
12 and 401.

13 When you sent them in, were they marked as exhibits?

14 MS. MARTABANO: In the file title, it will say,
15 "exhibit 401 proposed supplement," "exhibit 108, proposed
16 supplement." And exhibit 108, we had to use just a PDF marked
17 with a highlighter.

18 THE COURT: Is it possible for someone to put these on
19 the screen? Because I want to see if we resolve these now as
20 opposed to waiting for tomorrow.

21 MR. BURNETT: If you can put 108 up first so as to
22 compare what the defense is doing.

23 THE COURT: This is the original?

24 MR. BURNETT: Yes, this is the government version.

25 THE COURT: Can I see the proposed completing

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1 statements.

2 MS. MARTABANO: Mr. Smith can show them.

3 MR. DAVIS: Judge, if I may be excused for the rest of
4 this conference?

5 THE COURT: Yes, you can go.

6 MS. HUANG: Your Honor, I'm going to ask, as well.

7 THE COURT: Yes, you may.

8 Is there anything else or is that it?

9 MS. MARTABANO: For 108, that's the whole requested
10 provision.

11 THE COURT: How would this satisfy under the Rule of
12 Completeness? There's obviously a period of time between the
13 two sets of statements. So maybe you can connect the dots for
14 me.

15 MS. MARTABANO: Yes, your Honor. The beginning of the
16 chat is obviously suggesting that he's overseas and the
17 government has already discussed in its opening statement that
18 he fled and he wasn't there for a long period of time until he
19 came back. For us, he came back in December. This is part of
20 him coming back. And this bears on the fact that he was
21 staying over there and he had been having a rough couple of
22 months. We have other chats that will establish that he was
23 facing threats. And so, to the extent the government is
24 purporting to claim that he was staying there for nefarious
25 reasons or because he was hiding from some kind of enforcement,

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1 we think this provides color to the fact that he has been
2 struggling, you know, for the past several months with the
3 outcome of what's happened. So, just a little bit of extra
4 color in light of the government's position that, you know, he
5 was over there just to flee and to hide from this until he
6 thought he was safe to come home. We believe he stayed in part
7 because there were threats made against him. And as Mr. Talkin
8 referenced in his opening statement, I mean, he was waiting for
9 some things to just cool off and for the threats to die down
10 before he came back.

11 THE COURT: Okay.

12 MR. BURNETT: It's just not a Rule of Completeness.
13 That's just a different argument that the defense wants to make
14 to characterize the statement. This is a statement from months
15 later. The Rule of Completeness, as we laid out in our
16 briefing, is for a narrow purpose to prevent like a misleading
17 use or to contextualize words as it's used. There's no way
18 what he was saying two months later could be necessary to not
19 make what he said in October misleading.

20 THE COURT: I agree. Even under a broader view of
21 completeness, I'm not sure that these statements would fit
22 under the rule. But I agree with the government that there is
23 a narrower purpose than is intend under Rule 106, and I don't
24 think this comes close to meeting that standard. So we will
25 overrule the objection to exhibit 108 as it was originally

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1 presented.

2 Let's move to -- so you said 401 and 404.

3 MR. BURNETT: We'll start with 404. That's what I had
4 flagged as the more pressing thing for us.

5 Mr. Sears, if you could open up Column I so it
6 expands, double-click it.

7 And so, what this is, just so you understand, your
8 Honor, you have to read this from the bottom up. I think when
9 we present it, we'll try and flip it around for the jury, but
10 the bottom message is the first in time.

11 THE COURT: Okay.

12 MR. BURNETT: And the messages that have -- do you see
13 Column H has sender ID. The messages that begin with 289 are
14 Mr. Eisenberg, and the messages that begin 624 are the
15 counterparty.

16 THE COURT: Okay.

17 MR. BURNETT: So, for context, the government is
18 intending to introduce this just for the point that
19 Mr. Eisenberg was referring to what he had done as a pump, and
20 how he could have pumped the price even lower and still managed
21 to make a lot of money off of it, which goes to his knowledge
22 that his intent to manipulate and intent to create an
23 artificial price.

24 THE COURT: Understood. Is there a completing
25 statement or is this just an objection to the admission of this

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1 document?

2 MS. MARTABANO: No, your Honor, there's a completing
3 statement. For some reason, the computers are all frozen, but
4 we do have physical copies.

5 THE COURT: I have the email now. Maybe that helps
6 things.

7 MS. MARTABANO: Your Honor, the way that we've
8 presented it in the email, we did reverse it four times so it's
9 listed in chronological order for the ease of reading. We've
10 just put in the chat identifier in addition to the date so as
11 to simplify.

12 You'll see that our proposed additions are the yellow
13 highlights, and they are on either side of the government's
14 proposed exhibit. So immediately preceding and after.

15 THE COURT: I'm sorry. This is exhibit 401; right?

16 MS. MARTABANO: 404, is the shorter one.

17 THE COURT: Can you explain why this would be a proper
18 completing statement or these statements?

19 MS. MARTABANO: Sure. It goes to show both who this
20 person is and what their opinion was. It shows that very well
21 executed plan, "I was impressed with how you did this." This
22 is someone who was part of the Mango teams who advised from the
23 beginning and received tokens and saying he's worked and
24 consulted on different exchanges, he's deeply thought about
25 this different system and market structure. It provides, you

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1 know, and he says, yeah, exactly, it was a million dollar USDC
2 position and the Mango position size would have been like
3 a-hundred million Mango instead of five-hundred million. So it
4 provides context, that last part might have actually been
5 Mr. Eisenberg, but it just provides context to them trying to
6 say, you know, making out here like it was just a pump and
7 that's it. That's not the full context of what they're
8 discussing. And I think to try and excise it and to take out
9 the fact that this person is in fact discussing what happened
10 with him and saying, you know, that was a well executed play,
11 not that was an illegal manipulation of the market is highly
12 relevant to the discussion that's happening here since they
13 want to say, oh, it's all about him pumping the market. In
14 fact, this is being described by the very person who was
15 advising Mango as a well executed play.

16 MR. BURNETT: Your Honor, I think a few things.

17 So, first of all, the fact that the person purports to
18 have advised Mango does not mean they were currently advising
19 Mango or even that it's true. The idea that some other random
20 Twitter user's perspective on whether it was like a cool pump
21 or not and whether Mango was like a good platform or not is
22 pure hearsay and the definition of not relevant, let alone not
23 completing. The defense could never put on just a Tweet, for
24 instance, from someone claiming that they are from Mango
25 Markets saying that, like, this was an awesome hack and, like,

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1 Mango markets totally had it coming. They can't use Rule 106
2 to put in basically that the platform was bad when the narrow
3 purpose for which the statement is being admitted is just to
4 show Mr. Eisenberg's intent to pump the price.

5 THE COURT: Well, yeah, but I think the argument
6 that's being made is that the reason he said that depends in
7 part on the conversation he was having moments earlier.

8 MR. BURNETT: But, your Honor --

9 THE COURT: Hold on. Literally moments earlier. Let
10 me just break it apart because you said a few things there.
11 The mere fact that there's another individual's statements
12 being made that may be completing in the sense of not making
13 the statements that are sought to be admitted misleading are
14 from another person doesn't matter for Rule 106, right, because
15 the text of the rule says any other statement can come in if,
16 in fairness, it ought to be considered at the same time the
17 adverse party may do so over hearsay objection. So just that
18 technical piece of it doesn't take it out of the Rule of
19 Completeness.

20 MR. BURNETT: That makes sense, your Honor, but I
21 think what the issue is is that the fact that this statement
22 from the other person is what made Mr. Eisenberg comfortable
23 enough to say, yeah, I pumped the price, does not -- it doesn't
24 complete the statement. It's like in a context of like a gang
25 conversation of someone -- like a gang member comes up to

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1 someone and says like, oh, hey, like, I heard you, like,
2 dropped that guy. He, like, totally had it coming. Then the
3 person responds, like, oh, yeah, I shot him. Like, it's not
4 completing to have the person say the victim had it coming
5 beforehand. It's just -- it's context for why he was
6 comfortable saying it, but that's not actually completing in
7 any meaningful or probative way.

8 What is relevant here was Mr. Eisenberg saying he was
9 pumping, and this preamble to that conversation does not make
10 that -- it's not misleading. He's still saying he was pumping
11 with or without this part involved. The only addition that
12 this highlighted part adds is some guy who purports to be
13 associated with Mango Markets at some point in the previous
14 time as basically saying Mango had it coming.

15 THE COURT: I understand that. I do think -- well,
16 let me ask you this: you don't think that chopping this
17 conversation down to what's in white here, that the yellow
18 portion would not at least provide context on the discussion
19 that comes after it, meaning the Rule of Completeness is how we
20 refer to it, but the actual rule is called "related statement"
21 or "remainder of a related statement." The standard is other
22 statements that, in fairness, ought to be considered at the
23 same time.

24 I agree with you, and this is why I overruled the
25 objection on the last document. When you have documents that

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1 are months apart that are barely talking about the same thing,
2 that's not the type of completing statement that we would think
3 of. This, I understand the defense is saying, well, look, if
4 you're putting in part of this conversation and, in fact, if
5 you're especially trying to emphasize part of this
6 conversation, then let's at least get the full context of what
7 was being said in this conversation where you are in fact
8 trying to put in statements not only from Mr. Eisenberg, but
9 also the individual who he was speaking to. So if you're
10 trying to do both of those things, then, in fairness, the other
11 parts of the conversation should be discussed and addressed at
12 the same time.

13 So I'm going to sustain the objection to the original
14 exhibit, and unless there's any further issues, this version of
15 it can be the one that's used or if you can figure out another
16 way to present this that the parties can agree on.

17 MS. MARTABANO: Thank you, your Honor.

18 THE COURT: So that's 404. And now we have 401.

19 MS. MARTABANO: Yes, your Honor.

20 401 is very similar to 404. These are messages
21 literally immediately preceding the submission by the
22 government. They similarly provide context to the portion that
23 the government has edited and is seeking to provide.

24 THE COURT: So I'm looking at -- so I'm looking at the
25 modified documents of Mr. Burnett. Do you want to just tell me

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1 what this document is being offered for.

2 MR. BURNETT: Yeah. So, the main point that it's
3 being offered for is that Israeli, like the -- if you go to the
4 second page, to the second to last message from Mr. Eisenberg,
5 he says, significant capital, 10 million collateral deposited
6 to multiple Mango accounts \$2 million to \$3 million to
7 manipulate the underlying spot markets, which shows clearly his
8 intent to manipulate the underlying spot market.

9 (Continued on next page)

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1 MR. BURNETT: I think for starters, there are a few
2 things going on with the addition. For starters, the messages
3 that we had marked were from the 20th. And if you notice, like
4 some of this conversation that the defense is adding in is from
5 the 17th, the 15th, the 12th. So we have like a multiple-day
6 separation problem.

7 The other thing, which I'm not sure if defense is
8 still doing -- or asking for is this, like, link that's here.
9 So if you look on the second page, there's like --

10 MS. MARTABANO: Tom, we withdraw that.

11 MR. BURNETT: You withdraw. Okay. So you're not
12 looking to put in that link; you're just looking to put in the
13 yellow part here.

14 MS. MARTABANO: Yes.

15 MR. BURNETT: Got it. Okay. Well, that takes care of
16 that issue.

17 MS. MARTABANO: And I would note that at least a
18 portion of the yellow is from the same day, same conversation.

19 MR. BURNETT: I don't have any particular issue with
20 the rest of the 10/20 part coming in, it's the stuff in the
21 days before.

22 THE COURT: Okay. So we don't have an issue with the
23 October 20th material. That will come in. And so what's the
24 argument against kind of similar to the first document that we
25 looked at? The rule of completeness doesn't allow everything

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1 on a particular subject to come in. And these other
2 communications are from at least three days earlier; in one
3 case, eight days earlier, as you get earlier into the
4 conversation. So how would that fit under the standard that
5 applies under the rule of completeness?

6 MS. MARTABANO: Well, your Honor, it's all clearly
7 talking about the same incident and the same purported article
8 or blog post. It appears to us that this person is interested
9 in -- they have written about and they intend to keep writing
10 about. It obviously -- I mean, he's asking Mr. Eisenberg
11 directly about the allegations, is this your Discord account,
12 you know. And doing the math on --

13 THE COURT: The thing that you, I imagine, are focused
14 on, and it seems like the government doesn't have an objection
15 to, are the communications on the 20th that include the
16 questions about Mr. Eisenberg's involvement in the refund
17 that's currently being voted on.

18 MS. MARTABANO: That's correct, your Honor. That is
19 certainly our priority. We think that the rest of the messages
20 also provide context; because, again, it's the same person. At
21 the very least, it explains -- the top message just gives
22 context to who this person is and why they are interacting.

23 THE COURT: I actually think this is a rare case where
24 the additional parts of the discussion might cause more
25 confusion. But they're certainly not tightly related to these

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1 statements being offered and necessary to provide context. I
2 think that there's a fair argument that for the communications
3 on the 20th, that those are necessary to understand the
4 statements being offered, including because some of those
5 statements refer back up to some of those statements.

6 So if you look at what the government was seeking to
7 admit, it indicates one message, it says, I helped negotiate
8 the settlement as per my statement. The terms agreed upon are
9 in the proposal you linked, which is then a reference up to one
10 of the communications that I think the government is
11 comfortable coming in. That's the proper, I think, domain for
12 the rule of completeness. But I think the other ones are out.

13 So I will permit the addition of the statements that
14 are on the 20th, and otherwise the other remaining statements
15 are not proper under the rule of completeness.

16 MR. BURNETT: Just so I don't mess this up when we put
17 this in, you guys are not at this point -- you're not trying to
18 have us admit the thoughts on \$110 million Mango exploit
19 article?

20 MS. MARTABANO: Sorry, what was that?

21 MR. BURNETT: You're not making a motion to have us
22 include the thoughts on 110 million --

23 MS. MARTABANO: No, that's the link that --

24 MR. BURNETT: Okay. Got it. Okay.

25 THE COURT: Okay. Those are those three.

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1 What's next?

2 Mr. Talkin, I thought you were taking off.

3 MR. TALKIN: I was just taking a break.

4 MR. BURNETT: Sam just loves watching this. This is
5 his favorite.

6 So on the rule of completeness topic, I guess like the
7 only other thing is there were a number of search histories and
8 things that we plan to admit that were flagged. And the
9 defense's letter is, Hey, they may have a completeness
10 objection to. We need to put those in at the same -- the
11 completeness in at the same time as we offer the exhibits. So
12 I ask that we have -- we just got to know what those are going
13 to be and if it's going to happen.

14 MS. MARTABANO: We can get those to you hopefully by
15 tonight, Tom.

16 MR. BURNETT: Okay. That sounds good.

17 You know what? That might be it for me.

18 MS. MARTABANO: I think on those, we would just ask
19 for a proffer. In the opening statement today the government
20 referenced, He ran these searches, he ran these searches. If
21 that's all they intend to put in, I think that we're fine with
22 that.

23 If they intend to say that, you know, He was running
24 these searches, just as I said earlier with respect to the
25 first exhibits we were starting with, 609, you know, especially

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1 with his tweets and some of the searches he's looking at or the
2 press releases he's finding, it does raise the issue of what he
3 would have understood.

4 If the government is going to argue he read these
5 articles, therefore he understood that his actions were
6 governed by the CEA and he was on notice under the CEA, we
7 would take issue with that. If they're only seeking to say he
8 ran these searches, I think that that's fine, and we'll come up
9 with any potential supplement. But it would help us guide our
10 supplemental if you --

11 MR. BURNETT: We definitely intend to argue that the
12 things you read show that he knew what he was doing was wrong
13 and unlawful. That's the point.

14 MS. MARTABANO: And I think, your Honor, there, it
15 gets to what we were saying earlier. It does create this issue
16 of a trial within a trial.

17 None of these cases are Mr. Eisenberg's case on all
18 fours. In fact, you have SEC cases, DOJ cases, CFTC cases,
19 which most of us would argue are -- actually show that there's
20 regulatory uncertainty here and inconsistency. And if there's
21 inconsistency for us as lawyers, then how is Mr. Eisenberg, as
22 a layperson, supposed to be attributed with knowledge that he
23 knew that these articles that he purportedly read would
24 establish that his conduct was illegal under the CEA?

25 As I understand it, like I said, the government has

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1 sought to preclude us from even bringing up any arguments of
2 regulatory uncertainty or the fact that there wasn't clarity
3 out there that this would be governed by the CEA.

4 So they want it both ways. They want to say, He read
5 these unrelated articles and he knew; but they won't let us
6 argue that, in fact, they show that he might not have
7 understood that at all.

8 THE COURT: I thought the way you put it was an
9 excellent point to be made to the jury. I don't understand
10 what the -- you wouldn't have an objection to counsel's
11 argument on -- all you can do is put these exhibits in; you
12 can't do that much with it.

13 You may argue that he knew what he was doing and the
14 law is really clear, whatever you're going to argue. But that
15 was a pretty -- that was a compelling rendition of what the
16 defendant's position is as to those documents that can be made
17 to the jury in response, right. You're not taking a position
18 that anything that counsel just mentioned is something that
19 can't be said to the jury, right?

20 MR. BURNETT: No. And to be clear, I think like what
21 we had moved on was that there can't be evidence of regulatory
22 stuff or arguments about regulatory uncertainty that aren't
23 tethered to some foundation of Mr. Eisenberg seeing something
24 or not seeing something.

25 THE COURT: He saw an article that said no one knows

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1 what's happening under the commodities Exchange Act.

2 MR. BURNETT: Right. If there's a foundation for him
3 seeing that, then that's fine. We're putting in stuff to the
4 contrary.

5 THE COURT: Just to be clear, in terms of the
6 arguments to be made by counsel, they are absolutely going to
7 argue that it was so unclear that the fact that he was looking
8 at some articles is totally irrelevant to anything. And you'll
9 take the contrary view. You'll say, Well, he was obviously
10 keeping up to date on everything; he was tracking what was
11 happening in the law. And so we can assume that he understood
12 what was going on.

13 MR. BURNETT: That's right. And obviously his
14 knowledge of the CEA in particular does not matter, even under
15 this Court's instruction. So we obviously think there's some
16 issues with the framing the defense has, but they can make what
17 arguments they want to make.

18 THE COURT: Okay. So hopefully that helps in terms of
19 the argument issue. But I understand, as it presently stands
20 as to -- and to be clear, you are referring to the documents as
21 to which I overruled the objection from yesterday.

22 MS. MARTABANO: Yes. You said you would be open to a
23 proffer from the government, and then we saw your orders and we
24 sent an email.

25 THE COURT: Yes. And you're making a 402/403

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1 objection pending some proffer.

2 MS. MARTABANO: Exactly.

3 THE COURT: Okay. So taking these documents as a
4 category, Mr. Burnett, I understand they are all from before
5 the time of the offense. So can you just give us a proffer
6 what the relevance is? You've already touched on it, but just
7 so we're clear about it.

8 MR. BURNETT: Sure. The relevance is that we need to
9 prove that Mr. Eisenberg generally knew that his conduct was
10 unlawful. And the fact that he had previously searched a
11 number of cases where there were either regulatory actions
12 related to market manipulation or fraud in the cryptocurrency
13 space or open market manipulation, in the case of the *Phillips*
14 case that he cited, show that Mr. Eisenberg was very well aware
15 that it was generally unlawful for him to engage in market
16 manipulation or the types of fraudulent acts that he did.

17 THE COURT: What about the argument that all of those
18 other cases, the press releases, everything, they may have
19 happened before the time of the offense, and so were known to
20 Mr. Eisenberg, but they are not the same stuff? They are all
21 different kinds of acts.

22 MR. BURNETT: I think that is a standard that is
23 literally -- unless he searches, If I do this, will -- right,
24 what he did and not happened yet, it would be impossible for us
25 to meet that standard. That goes to weight; it doesn't go to

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1 the admissibility of the evidence or the unfairness of offering
2 it.

3 THE COURT: Right. So let me give you an example.
4 Let's say *Phillips*. How does *Phillips* play into knowledge or
5 willfulness as it would be relevant to this case?

6 MR. BURNETT: Sure.

7 THE COURT: Understanding that it doesn't need to be
8 the exact same thing in the exact same circumstances, but --

9 MR. BURNETT: Sure. The *Phillips* indictment that
10 Mr. Eisenberg quoted from on his Twitter account charged a
11 person with wire fraud and commodities fraud in connection with
12 a scheme that involved manipulating the spot market in order to
13 achieve a desirable result under a particular option contract
14 that that person had, which is, from the government's view,
15 highly analogous to the situation we have here, where
16 Mr. Eisenberg manipulated the spot market of an asset in order
17 to get a win or in order to manipulate the price of a swap that
18 he had in connection with the Mango Markets trades.

19 THE COURT: Okay. Understood.

20 Okay. So I think in these circumstances, given that
21 the objection is just on 402/403 grounds, I don't think for
22 admissibility purposes the potential prejudice or jury
23 confusion substantially outweighs the probative value of these
24 documents. However, as I think we've clarified, counsel will
25 be permitted to argue exactly as counsel has very artfully

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1 argued, that these other documents that Mr. Eisenberg may have
2 been searching for, including any search histories, that sort
3 of thing, just have no relevance here and don't bear on his
4 knowledge, especially given the legal uncertainties surrounding
5 the commodities space.

6 MS. MARTABANO: Thank you, your Honor.

7 I think we may ask the Court to consider that there be
8 some kind of instruction, that these are not identical facts.
9 Or if the government won't stipulate to that, just something so
10 that the jurors can understand that none of those are the same.
11 And I'm offering that to avoid the issue of a trial within a
12 trial, of us needing to bring up the specifics of every single
13 case. There's like four or five of them at least that are
14 cited.

15 THE COURT: Are these documents coming in through one
16 of the FBI agents?

17 MR. BURNETT: Yes.

18 THE COURT: Okay. So I think the way it would
19 normally work is you can cross-examine the FBI agent as to any
20 documents that are admitted through that agent.

21 MS. MARTABANO: Okay. As long as your Honor is okay
22 with us getting that deep into the weeds on it, that's fine.

23 THE COURT: If the government is putting in the
24 statements through a particular witness, then you are free to
25 cross-examine that witness as to those statements. That is how

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1 it works.

2 MS. MARTABANO: Thank you, your Honor.

3 MR. KLEIN: Your Honor, there are other things in the
4 record that we could pull and offer into evidence that would
5 show he was looking at other articles and showing other things,
6 not going to the truth, but to the state of mind.

7 So I think if this is coming in, these four, we should
8 be entitled to go to the discovery and pull the other articles
9 that we have in discovery that show -- because they've selected
10 just the ones they like, obviously. And there's other ones in
11 there that we could actually put into evidence that would show
12 this wasn't just a single focus on these indictments; there
13 were actually a lot of other articles looked at.

14 MR. BURNETT: Mark exhibits then.

15 THE COURT: Yes. I'm happy to look at anything that
16 you provide me and make a determination as to whether they
17 would be admissible or not.

18 I understand what you're saying. You're saying there
19 was an issue that came up previously where there were
20 statements made after the time of the offense. And so there
21 wasn't a way for the defense to get in those statements other
22 than through the rule of completeness. I think you're talking
23 about something different, which is literally at the same time
24 of these searches. There were other searches that might point
25 in the opposite direction, but go solely to state of mind, not

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1 to the truth of any matter in those particular documents. And
2 so I'm happy to take a look at those and see if they fit under
3 the exception.

4 MR. KLEIN: Thank you, your Honor.

5 MS. MARTABANO: Thank you, your Honor.

6 THE COURT: Okay. Again, there were so many exhibits
7 that were objected to that we've talked about them in
8 categories. And I want to make sure that if there are any
9 particular ones that the defense takes special issue with,
10 like, for instance, I just questioned the government concerning
11 the *Phillips* document. But if there's something where you say,
12 I understood what you said, Judge. But there's like these five
13 documents that are way off base because they just literally
14 have nothing to do with what's going on here, then isolate
15 those and raise those in the morning so that we can just figure
16 out -- because I don't want -- I did this as a way to
17 streamline things; but I want to make sure everyone understands
18 I did not do that to the exclusion of, Hey, there's a document
19 that we really want you to take another look at because it's
20 different than the ones that you put into that category.

21 MS. MARTABANO: Thank you, your Honor.

22 MR. KLEIN: Your Honor, Mr. Davis is sending us the
23 exhibits, prospective exhibits for tomorrow in about half hour
24 or an hour. And we will go through that with that in mind and
25 forward it onto the chambers, like we did with 1512.

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1 THE COURT: Okay.

2 MR. KLEIN: Are we meeting tomorrow then -- it sounds
3 like we should plan on meeting --

4 THE COURT: 8:30.

5 MR. KLEIN: 8:30.

6 THE COURT: We'll see you here.

7 And we need to actually be here at 8:30. I know that
8 there's sometimes unavoidable delays, but I think -- no, not
9 that anyone was responsible for this, but I think we got
10 started at something like 8:45. It's hard to not get started a
11 little bit late. So try to be here a little bit early so we
12 can really make use of that 30 minutes.

13 MR. KLEIN: Your Honor, our client wasn't here on
14 time. That was the issue, the bus --

15 THE COURT: No. That's what I assumed and it's
16 nobody's fault. I'm just trying to make sure that we can
17 maximize time. Because I want to give the parties the time
18 they need to raise all the issues that they have to.

19 MS. MARTABANO: Thank you, your Honor.

20 MR. BURNETT: Just on this unlawfulness point that
21 we've been discussing here, as I understand the instruction
22 that the Court intends to give, it's that the person --
23 Mr. Eisenberg needs to know that his conduct is generally
24 unlawful, not that he violated like a particular statute.
25 There's been a lot of emphasis from the defense on framing of

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1 it. He's got to know it's the CEA; he's got to know it's the
2 CEA. I just want to make sure or flag, like if that is the
3 line of cross or like the argument, that he's got to know it's
4 the CEA, we're going to be asking for a supplemental
5 instruction that that's just -- that that's not true.

6 THE COURT: Well, I don't think the parties got that
7 deep in the weeds. And when we were talking about the jury
8 instructions, you raise a fair point.

9 I guess my question for you is so what did Judge
10 Friendly mean in *Dixon*, when he said it means generally
11 unlawful under the securities laws? I think that's the way it
12 was put in *Dixon*, which I don't think anyone said that that's
13 wrong. I mean it goes back and forth between is it *Kaiser* and
14 then finally *Kosinski* that comes after it. But I may be
15 getting the names wrong.

16 MR. BURNETT: Even the cases that have come out the
17 non*Kaiser* way on willfulness have not required knowledge of the
18 specific statute.

19 THE COURT: That I agree. That I agree. It's not the
20 specific statute.

21 I think what you had said was is it generally -- does
22 this show knowledge under -- that it was unlawful under the
23 commodities laws or the analogue of the securities laws.

24 MR. BURNETT: I think it's generally unlawful. If he
25 thought that it was unlawful under the securities laws, but,

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1 like, whoops, it was unlawful under the Commodities Exchange
2 Act, that's like a classic mistake of law defense that's only
3 available in the narrow circumstance where it is like a tax
4 case.

5 THE COURT: You may be right.

6 On what we agree on, I don't believe it is the rule or
7 regulation, because that's an affirmative defense at least as
8 to Count One and not being raised here. So it's not that.

9 And so as to how much broader it gets, I agree with
10 you that the suggestion from the cases are that it's generally
11 unlawful, meaning it's unlawful conduct under some law is my
12 understanding of what we're talking about here. You don't need
13 to show that it's unlawful under this specific title of the
14 U.S. Code as opposed to this specific title of the U.S. Code.
15 I think that's correct.

16 But I'll hear the parties if there's some authority
17 that says it's either narrower or broader than that. But I
18 think -- and maybe a way to understand what was happening in
19 *Dixon* is that if it was unlawful, it would not have been -- it
20 would only have been unlawful in that area of the law, which is
21 why the case was written in that way.

22 MR. BURNETT: Right.

23 Like, I think a good example would be if someone
24 commits like classic fraud and involving a security, and they
25 know that, like, fraud is wrong and a crime, but have no idea

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1 about the existence of the securities laws. It's not a
2 defense; it's like, Well, I knew fraud was illegal, but I
3 didn't know about the applicability of the securities laws
4 here.

5 THE COURT: Now that we've had this colloquy, from the
6 defense side, does anyone disagree about this? Because I think
7 that what -- the line of disagreement on the instructions was
8 between wrongful, as like an immoral purpose, and unlawful as a
9 clear dividing line. And so the Court resolved that, resolved
10 that for purposes of the proposed jury charge, to include an
11 instruction on unlawfulness.

12 I think the government is now raising an issue of
13 whether that -- whether the defense plans to argue that if
14 Mr. Eisenberg did not know that this particular conduct was
15 unlawful under the Commodities Exchange Act or as to specific
16 rules and regulations, that then that does not satisfy the
17 intent requirement.

18 Is the defense planning to argue either of those two
19 things?

20 MR. GREENSPAN: No, your Honor. We're satisfied with
21 the Court's instruction, and we didn't ask for an instruction
22 on any specific law or even any specific category of law.

23 I think the way that this has come up is just, you
24 know, the CEA is the applicable law. We're not saying that he
25 had to know the CEA was the law that was breached, but it's

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1 just in context. I don't think we've made the argument that I
2 think the government is attributing to us.

3 THE COURT: If the CEA comes up, then I'm sure it
4 would come up just in context, because some of those articles
5 and press releases are talking about it.

6 MR. BURNETT: I just want to make sure, if we have
7 future debates about these articles or these tweets --

8 THE COURT: If we don't have any --

9 MR. BURNETT: This was manipulation under the
10 securities laws, so it can't be relevant to his knowledge about
11 manipulation.

12 THE COURT: That's why I asked the question.

13 But we get to have that back-and-forth over Second
14 Circuit case law over the last 40 years, which is always fun,
15 but does not appear to be an issue.

16 MR. BURNETT: Can't seem to get away from these legal
17 issue cases.

18 THE COURT: Okay. So anything else from either side?

19 MR. BURNETT: The defense party just needs to drop
20 this crazy willfulness.

21 THE COURT: Anything else from the government?

22 MR. BURNETT: Nothing else.

23 THE COURT: Anything else from the defense?

24 MR. KLEIN: No, your Honor.

25 THE COURT: All right. Thank you very much.

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Really appreciate it.

(Adjourned to April 10, 2024, at 8:30 a.m.)

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